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OUTLAWING AN ANCIENT EVIL: **TORTURE**

Convention against Torture
and Other Cruel, Inhuman or
Degrading Treatment or Punishment

INITIAL REPORT OF CANADA

OUTLAWING AN ANCIENT EVIL: TORTURE
CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR
DEGRADING TREATMENT OR PUNISHMENT

INITIAL REPORT OF CANADA

MULTICULTURALISM AND CITIZENSHIP CANADA

OTTAWA
1989

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No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. (Universal Declaration of Human Rights -- Article 5)

1. *Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.*

2. *No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.*

3. *An order from a superior officer or a public authority may not be invoked as a justification of torture. (Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment -- Article 2)*

Everyone has the right not to be subjected to any cruel and unusual treatment or punishment. (Canadian Charter of Rights and Freedoms -- Section 12)

FOREWORD

On December 10, 1984, the United Nations General Assembly adopted the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.

Canada participated actively in the drafting of the Convention, particularly through its involvement with the work of the United Nations Commission on Human Rights, and supported its adoption by the General Assembly. The Government of Canada subsequently began talks with provincial and territorial governments with a view to signing and ratifying the Convention. Having obtained their approval, the Government of Canada signed the Convention on August 23, 1985, and ratified it on June 24, 1987. The Convention came into effect for Canada on July 24, 1987.

The Convention obliges States parties to prevent torture in their jurisdictions and to make torture a punishable offence. No circumstances -- not war, not public emergency, not orders from a higher authority, nothing -- may be invoked to justify torture. The treaty provides for extradition of torturers. Failing extradition, the States where the torturers are found shall prosecute them under certain conditions. This is an application of the extraordinary concept of "universal penal jurisdiction". States parties also must provide for the right of victims to compensation and rehabilitation.

A Committee against Torture was set up to oversee implementation of the Convention. The Committee consists of ten experts, elected by States parties to serve in their personal capacity, consideration having been given to equitable geographical distribution (a list of members can be found in Annex 4).

Under article 20 of the Convention, the Committee against Torture has the far-reaching power to examine, *ex officio*, reliable information alleging the systematic practice of torture in a State party, provided the State party did not reject this provision upon ratification of the Convention. Canada has accepted this provision. Further, having obtained the support of all provincial and territorial governments, the Canadian government is preparing to accept the complaint procedures for individuals and States provided for under articles 21 and 22 of the Convention. These procedures are optional; States wishing to submit to them must make express declarations to that effect. A number of countries which have ratified the Convention have accepted these procedures (see Annex 3).

States parties are required to report to the Committee on measures they have taken to give effect to the Convention. Canada's first report was submitted January 16, 1989, and is scheduled to be reviewed by the Committee against Torture during its November 1989 session in the presence of a Canadian delegation. This report forms the central part of the present document and is reproduced in full herein. It is the result of close collaboration between the federal government and the provincial and territorial governments, most governments having prepared their own section. Part one and the federal section were prepared by the federal Department of Justice.

The report is published in Canada as part of the human rights educational program of Multiculturalism and Citizenship Canada. For the reader's use, the text of the Convention has been included in an annex, in addition to information of common interest, such as the list of States parties to the Convention, information on the Committee against Torture and on the Voluntary Fund for Victims of Torture, a sample of measures taken to prohibit torture, amendments made to the *Criminal Code* of Canada, and a reading list.

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* The texts listed on this page, including Annex 1, constitute the first report of Canada as submitted to the United Nations January 16, 1989. Other documents listed on the following page, Annexes 2 to 8, were added for purposes of Canadian publication.

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INTRODUCTION

1. The United Nations *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* was adopted by the United Nations General Assembly on December 10, 1984, and came into effect on June 26, 1987. On June 24, 1987, Canada ratified the Convention.

2. This report, which will mainly cover the period from July 24, 1987 to March 31, 1988, is submitted in accordance with article 17 of the Convention. Part I places the Convention in the context of the Canadian constitutional system and Part II outlines measures in force at the federal, provincial and territorial levels to give effect to the provisions of the Convention.

PART I: INFORMATION OF A GENERAL NATURE

3. Canada is a federal state made up of ten provinces and two territories. Within the Canadian Confederation, legislative powers are exercised by the Parliament of Canada and by provincial legislatures according to the distribution of legislative powers set forth in the *Constitution Act, 1867* (formerly known as the *British North America Act, 1867*) and the amendments thereto. Pursuant to a delegation of powers to the territories by the federal Parliament, the two territorial assemblies also exercise legislative authority on certain issues.

4. In Canada, international treaty law is not automatically part of the law of the land. The provisions of a treaty can be incorporated into domestic law either by enactment of a statute giving the treaty the force of law, or by amendment of the domestic law, where necessary, to make it consistent with the treaty. The implementation of a treaty whose provisions come under the jurisdiction of one, or the other, or both levels of government, requires the intervention of the Canadian Parliament, the provincial legislatures and, unless Parliament decides otherwise, the territorial legislative assemblies for those parts of the treaty that fall within the jurisdiction of each. Because Parliament does not have the legislative power to give effect to all the obligations which Canada assumed towards the international community by ratifying the Convention, extended consultations were required between the federal and provincial governments, in which the latter undertook to ensure compliance with those provisions of the Convention falling within their exclusive legislative authority.

5. An individual who alleges a violation of a provision of the Convention has recourse to remedies provided for in Canadian law or the *Canadian Charter of Rights and Freedoms* (the "Charter") (attached as Appendix 1¹). The Charter was incorporated into the Canadian constitution on April 17, 1982, by virtue of the *Constitution Act, 1982* (*Constitution Act, 1982*, c. 11 (U.K.)). It guarantees certain fundamental freedoms and legal rights, including the right of everyone "not to be subjected to any cruel and unusual treatment or punishment" (s. 12). The Charter, pursuant to section 32, guarantees the rights of private persons in relation to federal and provincial legislatures and governments. This section has been interpreted by the courts to apply to the full range of governmental activities, including administrative practices and the acts of the executive branch of government, as well as to

¹ The appendices referred to in this report are submitted separately. The list is provided in Annex 1.

enactments of Parliament or the legislatures (*Operation Dismantle et al. v. The Queen et al.*²).

6. Section 1 of the Charter provides that the rights and freedoms contained therein may be limited to the extent that such a limit is prescribed by law and demonstrably justified in a free and democratic society. The Supreme Court of Canada has indicated that in order for a limit to meet the requirements of section 1, the limit must serve a sufficiently significant objective and employ proportionate means to attain that objective (*R. v. Oakes*, Appendix 2). Section 33 of the Charter permits a clause to be inserted in legislation, so that it may operate notwithstanding sections 2 or 7 to 15 of the Charter. In order to do so, a federal or provincial government must insert a clause declaring specifically that it is passing the law notwithstanding specified provisions of the Charter and in addition, the declaration ceases to have effect after five years, unless it is re-enacted. In *Alliance des Professeurs de Montréal et al v. A.G. Québec*, the Québec Court of Appeal stated that a provision which invokes section 33 must be expressly stated, must be a part of the statute which is to be exempted and must indicate which provision of the Charter is to be overridden. More generally, the Court indicated that section 33 must be strictly construed because of its impact on fundamental rights. In effect, this section cannot be employed without great political debate and publicity.

7. Canada is also a party to the *International Covenant on Civil and Political Rights* which provides in Article 7 that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". The *Optional Protocol* to the Covenant, to which Canada is also a party, permits an individual to file a communication with the UN Human Rights Committee, alleging a violation of any of the provisions of the Covenant. As well, on December 17, 1982, pursuant to Resolution 32/64 of the General Assembly, the Canadian government made a unilateral declaration against torture, in support of the *Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.

² Copies of the cases referred to in this part and in the federal portion of this report are contained in Appendix 2.

PART II: INFORMATION IN RELATION TO THE ARTICLES IN PART I OF THE CONVENTION

A. MEASURES ADOPTED BY THE GOVERNMENT OF CANADA

Article 2

1. Canadian Charter of Rights and Freedoms

8. Several provisions of the *Canadian Charter of Rights and Freedoms* are relevant for the purpose of preventing acts of torture. Section 12 guarantees that "[e]veryone has the right not to be subjected to any cruel and unusual treatment or punishment". Additionally, section 7 guarantees the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice. As well, section 9 guarantees the right not to be arbitrarily detained or imprisoned.

9. Anyone whose Charter rights have been infringed may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just within the circumstances (s. 24(1)). Where evidence has been obtained in a manner that infringes or denies a Charter right, it will not be admitted in judicial proceedings if, having regard to all of the circumstances, its admission would bring the administration of justice into disrepute (s. 24(2)). Moreover, where a law is inconsistent with the provisions of the Charter, a court must declare the law to be, to the extent of the inconsistency, of no force or effect (s. 52).

2. Legislative Provisions

10. In order to ensure compliance with the Convention against Torture, Parliament amended the *Criminal Code* to create a specific offence of torture (s. 245.4) (see *Canada Gazette*, Part III, Vol. 10, N°. 2, c. 13, attached as Appendix 3). This amendment prohibits acts of torture committed by officials, such as peace officers, public officers and members of the military forces, or by persons acting at the instigation of, or with the consent or acquiescence of, such persons. It is no defence to a torture charge that the accused was ordered to perform the act in question by a superior or public authority, nor can the act be justified by exceptional circumstances, including a state of war, threat of war, political instability or any other public emergency.

11. Additionally, the *Canadian Bill of Rights* of 1960 and various other *Criminal Code* provisions prohibit conduct that could constitute torture or cruel, inhuman or degrading treatment or punishment. For example, the *Criminal Code* prohibits such practices as assault, both with or without bodily harm (s. 245), causing bodily harm with intent to wound a person or to endanger life (s. 228), administering a noxious thing (s. 229), extortion (s. 305) and intimidation (s. 381) (Appendix 4).

3. Legal Provisions Governing Police and Security Forces

12. In addition to the above *Criminal Code* and constitutional provisions, the use of force by police agencies is regulated by legislative, regulatory and administrative provisions. The standards set out in these provisions meet and often exceed those set out in the U.N. *Code of Conduct for Law Enforcement Officials*.

13. Any member of the Royal Canadian Mounted Police (the "RCMP") who fails to respect the rights of all persons, or who abuses his or her authority in the performance of duties, is, in addition to being liable to criminal penalties, guilty of a Code of Conduct offence and liable to punishment ranging from a simple reprimand to dismissal from the force (*An Act to amend the Royal Canadian Mounted Police Act*, S.C. 1986, c. 11, ss. 37, 41(1), 43(1) and 45.12(3)) (Appendix 9). As well, the RCMP is currently reviewing its internal directives to ensure that they conform with the Convention against Torture. It should be noted that, subject to Ontario and Québec, the federal government contracts out to the provinces and territories the policing services of the RCMP. Consequently, the provisions discussed in the federal portion of this report governing the RCMP are equally applicable to these other regions of Canada.

14. There also exist special provisions governing the Correctional Service of Canada to protect against abuses. These provisions include the following measures:

(a) Section 3.1 of the *Penitentiary Service Regulations*, promulgated on March 17, 1988, specifically prohibits every member of the Service from administering, instigating, consenting to, or acquiescing in the cruel, inhuman or degrading treatment or punishment of an offender who is or has been incarcerated in a penitentiary (Appendix 6).

(b) Policies aimed at controlling the use of force by personnel require that staff refrain from abusive conduct towards inmates, including the infliction of corporal punishment and personal injury. Whenever force is permitted to be used in order to handle inmates, it may not be used as punishment or for disciplinary purposes (see Commissioner's Directive ("CD") no. 605, Appendix 6).

(c) Staff may be held criminally and civilly liable for any excessive use of force. In addition, the Code of Discipline requires staff to follow the legislation, regulations and policies of the Correctional Service, and enforces this requirement by means of a system of service offences. Any employee of the Correctional Service who disobeys these requirements may be subject to disciplinary action ranging from a reprimand to dismissal (see CD no. 060, Appendix 6), in addition to any other criminal or civil liability.

(d) Other policies of the Correctional Service of Canada require the placement of community observers in institutions following a serious incident that involves violence against staff. Additionally, the policies of the Correctional Service ensure the offender's right to accept or refuse any medical treatment (see CD nos. 600 and 803, Appendix 6).

Article 3

15. In *Schmidt v. The Queen*, the Supreme Court of Canada held that "the treaty, the extradition hearing in [Canada] and the exercise of the executive discretion to surrender a fugitive must all conform to the requirements of the Charter". The Court also stated that "in some circumstances the manner in which the foreign state will deal with the fugitive on surrender, whether that course of conduct is justifiable or not under the law of that country, may be such that it would violate the principles of fundamental justice to surrender an accused under those circumstances". ([1987] 1 R.C.S., pages 20-21, 22)

Article 4

16. By virtue of s. 24 of the *Criminal Code* (Appendix 4), it is an offence to attempt to commit any of the offences contained in the Code. This would, of course, include the offence of torture, discussed under article 2 of this report. Anyone convicted of torture is liable to a term of imprisonment not exceeding fourteen years (s. 245(1), Appendix 3). Anyone convicted of an attempt to commit torture is liable to a term of imprisonment not exceeding seven years (s. 421(b), Appendix 4).

Article 5

17. On June 1, 1987, s. 6 of the *Criminal Code* was amended to give Canadian courts jurisdiction over the prosecution of an offence of torture where: (i) the act or omission is committed on board a ship or aircraft registered in Canada; (ii) the person who commits the act or omission, or the complainant, is a Canadian citizen; or (iii) the person is present in Canada after committing the act or omission (Appendix 3).

Article 6

18. A peace officer who has reasonable grounds to believe that a person has committed an indictable offence, such as torture, may arrest that person without a warrant for the purpose of criminal proceedings. In addition, all extradition treaties entered into by Canada provide that a provisional warrant of arrest may be obtained to secure the physical custody of a fugitive. A person arrested for the purpose of extradition will be set at liberty if proper supporting documentation is not received within a certain period of time, normally 45 days.

19. The Operational Manual of the RCMP provides that any arrested person who is not a Canadian citizen or landed immigrant shall be allowed to communicate immediately with a representative of his or her country (Appendix 5). As regards stateless persons, Canada is in the process of including a reference to such persons in its police manuals across the country. As well, Canada is taking steps to ensure that proper notices are given to States referred to in article 5, paragraph 1 of the Convention.

Article 7

20. Canada has jurisdiction to prosecute an accused for an offence of torture in all circumstances contemplated by article 5. The standard of evidence in Canadian criminal law (i.e. proof beyond a reasonable doubt) is the same for all offences, whether committed on Canadian territory or abroad. Furthermore, the provisions of the *Canadian Charter of Rights and Freedoms* aimed at ensuring legal rights (see, in particular, ss. 7-14 of Appendix 1) are applicable to anyone subject to criminal proceedings in Canada.

Article 8

21. A multilateral agreement providing for the extradition of individuals for certain offences may be regarded by Canada as a binding arrangement for the purposes of the *Extradition Act*, R.S.C. 1970, c. E-21. This would apply regardless of whether there is a

treaty in force or not between Canada and the other State Party. For the purposes of Canadian extradition law and practice, an offence of torture would be treated as if it had been committed not only in the place in which it occurred but also in the territory of Canada.

Article 9

22. The extradition treaties entered into by Canada provide for varying degrees of mutual judicial assistance between States Parties. For example, the treaty between the Netherlands and Canada provides a procedure in criminal matters for taking evidence of a witness located in the other country (Article XVII, Appendix 7). Similarly, s. 43 of the *Canada Evidence Act*, R.S.C. 1970, c. E-10, permits the examination of a witness located in Canada for the purpose of assisting a foreign court in any civil, commercial or criminal matter (Appendix 8).

Article 10

23. The Correctional Officers Recruitment Program, as well as refresher training courses on the duties and obligations of correctional officers, deal with the prohibition of torture and similar acts, and include instructions on how to determine an appropriate degree of force. As well, Correctional Service employees are trained in the interpretation and application of the relevant provisions of the *Criminal Code*, internal directives and guidelines that relate to the use of force (see CD 605, Appendix 6).

24. Every recruit to the RCMP is required to take courses on the "Handling of Prisoners", "Interrogation Techniques" and "Criminal Law". These courses include instruction on the use of force, statements, admissions and confessions.

Article 11

25. As regards the Correctional Service of Canada, the Inspector General conducts periodic reviews of compliance by institutions with the administrative policies and practices of the Correctional Service, as well as the governing regulations and legislation. The Enforcement Services Directorate of the RCMP also conducts a complete review, twice yearly, of the Operational Manual, which contains specific provisions on interrogation and custody of persons.

Article 12

26. The *Royal Canadian Mounted Police Act* requires officers to perform all duties that are assigned to them "in relation to the preservation of the peace, the prevention of crime, and of offences against the laws of Canada..." (s. 18). The Act also requires that every member of the RCMP shall, before entering upon the duties of the office, take an oath of allegiance and an oath of office whereby the member swears to "faithfully, diligently and impartially execute and perform the duties required" and "obey and perform all lawful orders and instructions" received "without fear, favour or affection of or toward any person" (s. 15) (Appendix 5).

Article 13

1. General

27. The policy document of the Government of Canada that sets out the purpose and principles of the criminal law, *The Criminal Law in Canadian Society* (Government of Canada, Ottawa, 1982), states that "any person alleging illegal or improper treatment by an official of the criminal justice system should have ready access to a fair investigative and remedial procedure". In fulfillment of this principle, Canadian law permits the filing of a complaint by any person with the police. Furthermore, the person may initiate criminal charges and proceedings before a justice under s. 455 of the *Criminal Code* (Appendix 4), and may personally prosecute the offence subject to the right of the Attorney General to intervene and take carriage of the prosecution. As well, protection for complainants and witnesses is routinely provided in Canada, where necessary, as part of the general responsibilities of the State to protect its citizens.

2. Complaints Mechanisms

28. *An Act to amend the Royal Canadian Mounted Police Act*, S.C. 1986, c. 11, was recently proclaimed in force. It establishes a procedure by which any member of the public, whether personally affected or not, may submit a complaint regarding the on-duty conduct of RCMP members. Complaints that cannot be disposed of informally will be investigated by the Force, and if the complainant is still not satisfied, the matter will be reviewed by the Public Complaints Commission. In exceptional circumstances, the Commission will be able to investigate a complaint or institute a hearing without the matter first being examined by the RCMP. The Commission would then forward its recommendations to the Commissioner of the RCMP and to the Solicitor General of Canada. (Appendix 9).

29. There is also a complaints procedure for inmates within the Correctional Service of Canada. Details of this procedure are contained at pages 10-11 of Appendix 10, "Inmate Rights and Responsibilities".

Article 14

30. As discussed under article 2, acts of torture may violate several sections of the *Canadian Charter of Rights and Freedoms*. Section 24(1) of the Charter entitles a person whose rights or freedoms have been infringed or denied to apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances. This could provide to a victim of torture a constitutional remedy for obtaining compensation and redress of acts violative of the Charter.

31. Redress is also available in the civil courts at common law, in respect of acts amounting to the tort of assault or battery. Such redress is available notwithstanding that the same acts may constitute a criminal offence and the accused was convicted or acquitted at trial.

32. The *Crown Liability Act* and the common law also permit persons to sue police officers, including members of the RCMP. The government is responsible for any liability, compensation or damages assessed on account of the improper and unreasonable acts of its

employees. Restitution may also be ordered under the *Criminal Code* in respect of property loss where the loss is readily ascertainable (s. 653-655, Appendix 4). Finally, amendments have recently been proposed to the *Criminal Code* which, if passed, will make the criminal trial and sentencing process more responsive and sensitive to the needs of victims. Highlights of these amendments are contained in Appendix 11.

Article 15

33. On June 1, 1987, a provision was added to the *Criminal Code* declaring that in proceedings over which Parliament has jurisdiction, any statement obtained as a result of torture is inadmissible in evidence except as proof that the statement was so obtained (Appendix 3, s. 245.4(4)). Additionally, in Canada, the common law confession rule has always prohibited the admission into judicial proceedings of statements obtained as a result of threats, fear or promise of hope or reward, except as proof that the statement was so made.

Article 16

34. Reference should be made to the discussion under article 2 of this report regarding constitutional and legislative provisions that prohibit acts of cruel, inhuman or degrading treatment or punishment. In the context of s. 12 of the Charter (i.e. the right not to be subjected to any cruel and unusual treatment or punishment), the Supreme Court of Canada stated in *Smith v. R.* that the criterion to be applied in determining whether a punishment is cruel and unusual is "whether the punishment prescribed is so excessive as to outrage standards of decency". Thus, it held that a mandatory 7-year term for importing narcotics was grossly disproportionate where it could be applied regardless of the relative gravity of the offence. The Court also noted that punishments or treatments such as corporal punishment, lobotomisation and castration (which do not exist in Canadian law) will always be grossly disproportionate and outrage standards of decency.

35. In *Lyons v. R.*, the Supreme Court of Canada held that the imposition of a sentence of indeterminate detention against a "dangerous offender" for a "serious personal injury offence" did not violate s. 12 of the Charter. According to the Court, the sentence took into account the condition of this type of offender, who is not inhibited by normal standards of behavioural restraint, so that future violent acts can be expected.

B. MEASURES ADOPTED BY THE GOVERNMENTS OF THE PROVINCES

CHAPTER 1: ALBERTA

Article 2

36. The Alberta Attorney General's Department administers, through Crown prosecution, the federal *Criminal Code*. The Code includes offences against the person, which covers acts, and attempted acts, of torture.

37. The Alberta Solicitor General's Department administers the *Corrections Act*, R.S.A. 1980, c. C-26, which governs probation and community corrections services in Alberta.

Articles 6 and 7

38. A person alleged to have committed any offence referred to in Article 4 is subject to due process of law, including prosecution under the *Criminal Code*, and the civil remedies available to the victim through the civil courts.

Article 10

39. The *Correctional Institution Regulations* under the *Corrections Act*, R.S.A. 1980, c. C-26, require that employees be informed of prohibitions against torture and delineate staff practices respecting the use of force. As part of current revisions under consideration to the Act and the Regulations, it has been proposed that Section 53 of the Regulations be deleted to conform with acceptable standards prohibiting torture.

Article 11

40. A systematic review of the treatment of persons under detention with a view to preventing any cases of torture is not included in legislation, nor is legislation proposed. The spirit of this article will be addressed in the proposed revision to the *Correctional Institution Regulations*.

Article 12

41. The *Fatality Inquiries Act*, R.S.A. 1980, c. F-6, provides for public investigation into allegations of torture or cruel, inhuman or degrading treatment or punishment. A Fatality Review Board provides for investigations of suspicious deaths of persons under any form of custody. Medical examiners appointed under the Act have extensive investigative powers.

42. This Act, together with the *Public Inquiries Act*, R.S.A. 1980, c. P-29, empowers the Attorney General to order judicial inquiries to be held and compels disclosure of relevant information by witnesses.

Article 13

43. The *Corrections Act* provides for compliance with the *Ombudsman Act* and policy requires that "outgoing mail to the Provincial Ombudsman cannot be opened under any circumstances" excepting where the Minister may exempt a correctional facility from complying with the Act in those circumstances involving a suspicious package that could create a situation of a life-threatening nature.

44. It is further stated in policy that mail should not normally be opened when addressed to the Solicitor General of Alberta, the Deputy Minister, Assistant Deputy Minister, Regional Directors, Members of the Legislative Assembly of Alberta, Members of the Parliament of Canada, or the federal Correctional Investigator. In the event a Centre Director authorizes the opening of mail, then a written report giving the reasons why it was deemed necessary is to be provided to the Regional Director.

45. Further, in terms of an audience to a complaint, an inmate may request an interview with the Centre Director, and, if not satisfied with the response, nothing will preclude the inmate's ability to pursue the complaint in accordance with the *Ombudsman Act*.

(See also Response under Article 12.)

Article 14

46. The *Criminal Injuries Compensation Act*, R.S.A. 1980 c. C-33, as amended, sets up a Crimes Compensation Board which provides compensation to victims, as well as to dependants of the victim and persons responsible for the maintenance of the victim, of *Criminal Code* offences against the person.

47. Victims or dependants may also obtain redress under the civil law. Also, a dependant of a victim, as well as other members of the family of a victim, may be entitled to compensation under the *Fatal Accidents Act*, R.S.A. 1980, c. F-5. A civil right to sue is implied in the *Proceedings Against the Crown Act*, R.S.A. 1980, c. P-18, which makes the Crown liable for torts committed by any of its officers or agents.

Article 16

48. The *Child Welfare Act*, S.A. 1984, c. C-8.1, authorizes the Government to provide protective intervention on behalf of children when there is evidence that a child is exposed to physical, sexual or emotional abuse, or the substantial risk thereof. It may be significant to note that the Alberta Department of Social Services' legislation and program policies do not prohibit corporal punishment, for disciplinary purposes, of children who are in foster homes under the protective guardianship of the Department.

(See also Response under Article 2.)

CHAPTER 2: BRITISH COLUMBIA

49. The Attorney General of British Columbia has registered his strong support for the ratification of this convention as a means of registering abhorrence against the practice of torture (letter to the Secretary of State for External Affairs, Sept. 19, 1986).

Introduction: The Role of the Provincial Ombudsman

50. As well as specific legislative and administrative measures carried out by individual ministries, the intent of this convention is addressed in a comprehensive manner through the **Office of the Ombudsman**. Under the terms of the *Ombudsman Act*, R.S.B.C. 1979, c. 306, this agency investigates complaints by members of the public against public officials. To facilitate access to the office by inmates of correctional or mental institutions, regular visits are made to these institutions.

51. The Ombudsman also carries out studies of particular areas of the provincial government to ensure that procedures are organized to effectively respond to public concerns. A study was completed in 1986 with regard to **police complaint procedures** to clarify who should investigate and rule on public complaints against police officers. Until such time as revisions to the *Police Act* can be enacted, the Ombudsman has made interim arrangements with the B.C. Police Commission as to how complaints against police officers shall be handled (see articles 12 and 13).

52. The Office of the Ombudsman, in 1986, dealt with 792 complaints from adult and youth correctional centres which were concerned with a variety of administrative matters, treatment of inmates, programs and medical issues, including a small number of complaints of maltreatment of inmates. In the same year, 277 complaints were investigated and completed from adult and youth mental treatment centres. The attached³ extract from the Ombudsman's annual report documents a number of cases related to alleged inmate or client abuse.

Article 2: Legislative ... or other measures

53. The Ministry of Attorney General is responsible for enforcement of statutory provisions and prosecution of offenses under the *Criminal Code* of Canada. No provision in B.C. law or policy may be invoked as a justification for torture or other inhuman treatment. Specific legislation, policies and procedures are referenced below by program area:

(a) For **police officers**, standards of conduct are regulated by the *Police Act*, R.S.B.C. 1979, c. 331, as well as by a *Disciplinary Code*, included in the regulations to that Act. Section 7(b) of the Code lists the following action as being subject to discipline: "any unnecessary violence to any prisoner or other person with whom he may be brought into contact in the execution of his duty".

(b) For **correction officers** charged with custody of offenders, conduct is regulated by: the *Correction Act*, R.S.B.C. 1979, c. 70; a mission document entitled *Beliefs, Goals and Strategies* (B.C. Corrections Branch, Ministry of Attorney General, rev. May 1986); and specific procedures set out in the *Correctional Centre Rules and Regulations 1986*. The latter *Rules and Regulations* specify in section 11 that physical restraint may only be used to prevent the inmate from injuring himself or others, in transporting inmates, or in preventing escapes, and use of restraining devices other than handcuffs or leg irons must be reported to superiors. Section 22 requires that searches are to be conducted with a minimum of force. Sections 35, 36, 37 and 38 outline rules related to use of segregation cells, including an inmate's right to meals, exercise, and medical supervision.

(c) The province's major **mental institution**, Riverview Hospital, has a number of policies and procedures relating to the reporting and investigation of patient abuse. Policy number A-42 outlines the reporting and investigation procedure for incidents of patient abuse, and policy number A-71 outlines the right of the provincial Ombudsman to investigate charges of abuse and gain access to any records needed in the course of such an investigation.

(d) Under the *Coroner's Act*, R.S.B.C. 1979, c. 68, a **coroner** is directed in section 10 to investigate all deaths which take place in a penitentiary, prison or while in custody of a peace officer. Under section 52, a coroner may authorize a post-mortem of any death in a hospital or institution at the request of the board of directors of that institution.

Article 10: Training of public officials

54. Training of police and correction officers is delivered by the Justice Institute in Vancouver, which reports to the Ministry of Attorney General. To supplement its core

³ See note 1.

curriculum, the Institute has established a family assault and sexual violence training centre which focuses on the criminal justice aspects of this type of violence, with an emphasis on intervention and prevention. To promote compliance with the Convention, a review of training for police, corrections officers, staff at mental institutions, and wildlife officers (who are empowered as peace officers under the *Wildlife Act*) will be undertaken to ensure inclusion of the concept of prohibition of abuse by staff.

Article 11: Interrogation rules and custody arrangements

55. Adequate protection for inmates of correctional centres is mandated by Part 2 of the document *Beliefs, Goals and Strategies*. It states in section 1 that "All persons must have their rights respected and be treated with dignity", and in section 12 that "Offenders are members of society and are to be treated with respect and dignity and are not to be subjected to cruel and unusual forms of treatment". More detailed rules regarding treatment of inmates are provided in the *Correctional Centre Rules and Regulations* which are revised regularly, most recently in 1985.

Articles 12 and 13: Complaints and investigation

56. For **inmates of a provincial correctional centre**, a grievance procedure is provided in section 40 of the *Correctional Centre Rules and Regulations*. Inmates can complain to specified officials, and also to the provincial Ombudsman. All such correspondence is considered to be private.

57. For **mental patients**, a complaint can be made to any staff member or to a representative of the provincial ombudsman's office, who visits the facility on a weekly basis. An investigation must take place immediately, with a report completed within 48 hours. All significant allegations of abuse are to be referred by the Executive Director of the facility to an independent panel of inquiry appointed by the Minister of Health for possible further investigation. If the complaint is made directly to the Ombudsman's representative, that individual is to have access to all records required to make a full investigation. A volunteer support person can be made available to the patient who suffered the alleged abuse.

58. For **members of the public**, a complaint of abuse against a police officer can be made to the Chief Constable of the particular police force. Amendments to the *Police Act* introduced in May 1988 would create an additional avenue of complaint, to a new Complaints Commissioner, who will be employed by the B.C. Police Commission.

59. A case currently under investigation will illustrate the complaint process. A young man suffered serious injury to his knee while in custody of Vancouver city police. His complaint to the Chief Constable resulted in an internal inquiry, the results of which were not satisfactory to the complainant. It then went to the Vancouver Police Board for investigation. The Board held an inquiry and hearing, but due to the circumstances of the case it did not issue a decision, rather requested that the case be referred to the B.C. Police Commission. The Police Commission directed that a three-person commission of inquiry look into the matter. This commission issued its report in mid-August 1988. It concluded that police officers involved in the case lied under oath at all stages of the inquiry, and that they violated their oath of office by either active participation in the assault or by standing silent. The commission's report resulted in the appointment by the Attorney General of a

special Crown Counsel who will review the earlier decision not to lay criminal charges, and will also review initial discipline charges and procedures. Another area of investigation will be the general ethics of police officers and how it is taught.

Article 14: Redress for victim

60. The Ministry of Attorney General is responsible for the *Criminal Injury Compensation Act*, R.S.B.C. 1979, which provides for compensation to victims or, where the victim has been killed, to the dependants of the victim, for a variety of criminal offences. The Schedule to the Act provides a list of these offences, which include assault, assault with a weapon causing bodily harm, aggravated assault, unlawfully causing bodily harm, kidnapping, illegal confinement, and intimidation. In compliance with the Convention, this Schedule was reviewed to ensure that it covers all forms of abuse contemplated by the Convention. Adjudication of claims under the Act is carried out by the Workers' Compensation Board. In 1986, a total of 1,659 claims were filed, and over \$4 million was paid out.

61. One example of compensation with regard to abuse by a public official is a case which was examined by the Ombudsman in 1984. A complaint of abuse against a patient of the Forensic Psychiatric Institute was substantiated and the staff member was dismissed. The patient sought compensation for mental trauma related to the event. He was awarded an *ex gratia* payment of \$200 for the relatively minor trauma which he experienced.

62. Civil remedies are also available to victims. In the case cited under article 13, the City of Vancouver reached an out-of-court settlement of \$52,500 with the complainant.

Article 15: Admissibility of evidence

63. The inadmissibility of evidence obtained by coercion or made as a result of torture is established by case law pursuant to the *Evidence Act*, R.S.B.C. 1979, c. 116.

Article 16: Other acts of cruel, inhuman or degrading treatment

64. The sexual harassment of an employee is not acceptable in British Columbia. Complaints of this nature are accepted under the *Human Rights Act*, S.B.C. 1984, c. 22. Many of the individual ministries of the British Columbia Government also have specific policies prohibiting such harassment of employees by other staff members.

65. Approximately 20 per cent of cases accepted by the B.C. Council of Human Rights in the fiscal year 1986/87 concerned sexual harassment. In a number of cases, the Council has ordered payment to the complainant of the maximum \$2,000 for humiliation, embarrassment, and injury to self-esteem.

66. In recent years, there has been considerable public concern about incidents of sexual abuse of children by teachers, social workers and other individuals in positions of the trust of children. This concern has resulted in the following initiative:

Criminal records screening is now undertaken for all individuals applying for positions in the provincial government and/or publicly funded agencies where they would be working with children. The intent of the screening is to identify those who may have abused

children previously, and prohibit them from taking such positions. This process has been reviewed by the Office of the Ombudsman which released a report in April 1987 entitled "Use of Criminal Checks to Screen Individuals Working With Vulnerable People." The Ombudsman was concerned with balancing the rights of vulnerable people (children, elderly, handicapped, and those in institutions) with those of prospective employees and employers. Recommendations in the report have been incorporated into the relevant ministry procedures.

67. In 1987, the Ministry of Attorney General established a new Victim Assistance Program to provide services to victims of crime. The services provided include practical assistance at the scene of the crime, help with filling out forms, emotional support, transportation to and from court, and basic information about the progress of their case, recovery of their property and other administrative details. A toll-free information line is available as well as a victim reparation program. The program is delivered by civilian staff and volunteers attached to local police forces, as well as by staff in sexual assault support centres.

68. A new *Victim's Rights and Services Act* (Bill 31) has recently been introduced by the Attorney General. Among the features of the bill would be: a victim's right to information on all stages of investigation and prosecution of an offense; the right to make representation on the impact of a crime; and the right to restitution from an offender.

CHAPTER 3: MANITOBA

Article 2

69. The Manitoba Attorney General's Department is responsible for administering the provisions of the *Criminal Code* in Manitoba, including prosecutions for offences against the person, and the specific offence of torture under section 245.4 of the *Criminal Code*.

70. With respect to probation and correction services in Manitoba, section 59 of *The Corrections Act*, C.C.S.M., c. C230, provides that the superintendent may establish rules and orders respecting the conduct and duties of the officers and employees of correctional institutions. In addition, section 61 of the Act provides that regulations may be made respecting the conduct and duties of officers and employees of correctional institutions, and the training of staff and personnel.

Article 10

71. Established under *The Provincial Police Act*, R.S.M. 1987, c. P150, the Manitoba Police Commission promotes the prevention of crime, efficiency of police services and police-community relationships in the province, and, for the attainment of these purposes, it may make recommendations respecting the training of police officers in the province. To ensure that obligations under the Convention are met, all police departments in Manitoba have been asked to amend training manuals, include the topic in training sessions, review interrogation and custody practices, and ensure all officers are made aware of the Convention and its requirements. All police departments in Manitoba are considered to have complied with the basic requirements of the Convention.

72. Psychiatric facilities have been made aware of their obligations under the Convention.

Article 12

73. Inquests are required under section 9(3) of *The Fatality Inquiries Act*, R.S.M. 1987, c. F52, in circumstances where there is reasonable cause to suspect that a person who died in a correctional institution, gaol or prison, or while that person was an involuntary resident of any institution of the province, died by violence, undue means or culpable negligence, or in an unexpected or unexplained manner, or suddenly of unknown cause, or died by reason of some act of a police officer performed in the course of his duties as a police officer.

Article 13

74. Under section 6(1) of *The Law Enforcement Review Act*, R.S.M. 1987, c. L75, persons who feel aggrieved by a disciplinary default allegedly committed by any member of a police department may file a complaint with the Commissioner under the Act. The definition of disciplinary default includes abuse of authority, including making an arrest without reasonable or probable grounds, or using unnecessary violence or excessive force. The penalties that may be imposed under the Act range from admonition to dismissal. In addition, where organizational or administrative practices of a police department may have caused or contributed to an alleged disciplinary default, the Commissioner may recommend changes.

75. Section 15 of *The Ombudsman Act*, R.S.M., c. O45, permits the Ombudsman to investigate any act done or omitted related to a matter of administration by a department or agency of government. This would permit persons in provincial gaols and provincial institutions to make complaints. However, the remedial powers of the Ombudsman are limited, and investigation is discretionary.

76. Under *The Mental Health Act*, R.S.M., c. M110, a person admitted to psychiatric facilities must be provided with a written communication outlining the functions of the board and the manner in which a matter could be referred to the board, and the right to communicate with members of Cabinet and the Legislative Assembly, inspectors of psychiatric facilities, and his or her attorney.

Article 14

77. Victims would generally be entitled to bring a civil suit for compensation for the torts of battery or assault. If the victim has died, his or her dependents are entitled under *The Fatal Accidents Act*, R.S.M., c. F50, to receive the compensation the victim would have received.

78. *The Criminal Injuries Compensation Act*, R.S.M. 1987, c. C305, allows for compensation for injuries or death arising from certain criminal offences, which include murder, manslaughter, and assault causing bodily harm.

Article 16

79. Under *The Mental Health Act*, the director is empowered to remove mental retardates, imprisoned for an offence in any prison or place of detention, other than a penitentiary, or

held in safe custody and charged with an offence, to an institution until the person is fit to be returned to prison, or discharged, as the case may be.

80. With respect to mentally disordered offenders involved in the criminal law, the Lieutenant Governor's Advisory Board of Review meets regularly to review and make recommendations to the Lieutenant Governor in the best interests of these persons, but not contrary to the public interest, with a view to subjects receiving medical treatment if possible.

81. It is an offence under *The Mental Health Act* for any officer, nurse, attendant, servant, or person employed in a psychiatric institution, or any other person having charge, care, control or supervision of a mentally disordered person, to ill-treat or willfully neglect a mentally disordered person.

CHAPTER 4: NEW BRUNSWICK

82. This report outlines the legislation, regulations, policies and programs which are relevant to the implementation of the Convention Against Torture in New Brunswick.

83. Nothing whatsoever in the laws and policies of New Brunswick justifies the use of torture. No official or agency of New Brunswick is entitled or authorized to use torture or to justify its use.

Article 2

84. The New Brunswick Department of Justice enforces the provisions of the federal *Criminal Code* in New Brunswick.

Articles 6 and 7

85. The *Habeas Corpus Act*, R.S.N.B. 1973, c. H-1, provides for an application to a judge of the Court of Queen's Bench for the purposes of determining if imprisonment is legal. The judge may order an immediate discharge from prison if he/she determines the detention is not lawful.

86. Persons alleged to have committed any offence referred to in Article 4 are subject to due process of law. This includes prosecution under the *Criminal Code* and remedies available through the civil courts.

Article 10

87. The *Police Act*, R.S.N.B. 1973, c. P-9.2, provides for the establishment of the New Brunswick Police Commission, which has existed since 1977. The Police Commission has a variety of duties and responsibilities but, in reference to this article, it audits and inspects the files and procedures of police forces, promotes and assists in the development of police education, and establishes programs and methods designed to create public understanding of police functions.

88. The Police Commission has a number of guidelines on the ways in which officers can act. These are detailed in the *New Brunswick Police Commission Policy and Procedures Manual*.

Article 11

89. Under New Brunswick's system of law, only a very small percentage of accused persons are remanded pending trial. The *Corrections Act*, R.S.N.B. 1973, c. C-26, provides that every correctional institution is a lawful place for confinement and treatment of persons being detained for trial or under sentence. The Act allows for adequate and appropriate treatment for persons being detained or under sentence.

Article 12

90. A complaints and discipline procedure is outlined in Section 22 of the *Police Act*. It deals with the actions of police officers that are alleged to contradict the limits of their authority.

91. Remedies are also available through criminal and civil procedures in the Province or through the Office of the Ombudsman.

Article 13

92. Chapter 31 of the *New Brunswick Police Commission Policy and Procedures Manual* requires that a suspect must be given the "police warning". The warning is as follows:

"You need not say anything. You have nothing to hope from any promise or favour and nothing to fear from any threat whether or not you say anything. Anything you do say may be used as evidence."

Article 14

93. The *Compensation for Victims of Crime Act*, R.S.N.B. 1973, c. C-14, allows for a court to award compensation for "pain and suffering".

Article 15

94. Chapter 31 of the *New Brunswick Police Commission Policy and Procedures Manual* states that the purpose of the police warning is to remove any apprehension that a suspect may feel at having been arrested, and to inform him of his right to remain silent.

Article 16

95. Section 18 of the *Corrections Act* provides that treatment for the rehabilitation of a person may include hard labour, even if it is not specifically stated in the sentence.

96. The *Corrections Act* states that adequate segregation and appropriate treatment will be provided for inmates.

CHAPTER 5: NEWFOUNDLAND

97. Prior to Canada's ratification of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* on June 24, 1987, the Department of Justice for Newfoundland had reviewed all provincial legislation and found it to be in compliance with the Convention. This report outlines the legislation and regulations in place as of June 1, 1988, which are relevant to the implementation of the Convention in Newfoundland.

Article 2

98. The Department of Justice, through Crown prosecution, enforces the provisions of the *Criminal Code* of Canada. *The Summary Proceedings Act*, S.N. 1979, c. 35, adopts the *Criminal Code* for provincial offences as it applies to summary conviction offences.

99. The Department of Justice administers *The Adult Corrections Act*, 1975, S.N. 1975, c. 12, which governs probation and community correction services in Newfoundland. The Department of Social Services administers provisions of the federal *Young Offenders Act* and *The Young Person Offences Act*, S.N. 1984, c. 2, which relate to youth correction services in the Province.

Articles 6-7

100. A person alleged to have committed, or charged with, an offence referred to in Article 4 is subject to due process of law, including prosecution under the *Criminal Code*. Also civil remedies are preserved and available to the victims of such offences through the civil courts.

Article 10

101. All persons described in Article 10 are instructed regarding the determination of an appropriate degree of force and potential liability resulting from cruel or abusive treatment of persons in their charge. *The Royal Newfoundland Constabulary Act*, R.S.N., 1970, c. 58, establishes the Royal Newfoundland Constabulary in the Province and prohibits cruelty or the use of excessive force by staff officers. This prohibition applies also to prison officers under *The Prison Regulations*, 1985, made pursuant to *The Prisons Act*, R.S.N., 1970, c. 305. These Acts also provide for disciplinary procedures and specific offences for abuse or mistreatment of prisoners or other persons.

Article 11

102. *The Prisons Act* provides for the safe custody and security of prisoners. The regulations made thereunder provide that prisoners shall be treated with due regard to the decency and dignity of the person, and that staff officers shall act impartially and without favour to all inmates. Like provisions are found in *The Royal Newfoundland Constabulary Act*.

Article 12

103. *The Summary Proceedings Act* provides that a judicial inquiry is to be held into the death of persons where there is reasonable cause to suspect that death resulted from violence, negligence, misconduct or by unfair means, where the deceased person was in custody or in other circumstances where there are suspicious circumstances surrounding the death.

Article 13

104. The federal *Royal Canadian Mounted Police Act*, *The Royal Newfoundland Constabulary Act* and *The Prisons Act* set out procedures for the investigation of complaints against officers in breach of legislation or regulations in contravention of the Convention. Inmates in provincial institutions have access to internal grievance procedures and, like all other citizens, have access to redress through the legal system by way of criminal prosecution and/or civil remedies.

105. *The Prison Regulations, 1985* provide for the protection of prisoners' rights such as receipt and mailing of correspondence, visitors, etc. and as well, *The Parliamentary Commissioner (Ombudsman) Act*, R.S.N. 1970, c. 285, provides that all persons in custody or patients in designated mental institutions shall have the right to correspond uncensored with the Ombudsman.

Article 14

106. Victims or dependents of victims of offences relating to torture have a civil remedy under the civil law. A civil right to sue is outlined in *The Proceedings Against the Crown Act*, S.N., 1973, c. 59, which makes the Crown liable for torts committed by any of its officers or agents. In the case of death of the victim, an action for damages can be brought under *The Fatal Accidents Act*, R.S.N. 1970, c. 126, for the benefit of the wife, husband, parent and child of the victim. "Parent" and "child" are broadly defined.

107. *The Criminal Injuries Compensation Act*, R.S.N. 1970, c. 68, established a Compensation Board for the administration of compensation to victims, the dependents of victims, or persons who were responsible for the maintenance of the victims, for *Criminal Code* offences against the person. The Act was amended in 1988 to add the criminal offence relating to torture as a compensable ground under the Act in compliance with the Convention.

Article 16

108. *The Child Welfare Act*, R.S.N. 1970, c. 37, authorizes the Government to provide protective intervention on behalf of children where there is evidence of neglect, physical, sexual or emotional abuse.

CHAPTER 6: NOVA SCOTIA

109. Canada ratified the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* on June 24, 1987. Nova Scotia had earlier, on December 10, 1984, issued a policy statement on the said Convention. The Government of Nova Scotia called upon all individuals to make a conscious commitment to the true meaning of this Convention. (A copy of the Policy Statement is attached herewith⁴.)

Article 2

110. The Department of the Attorney General enforces the provisions of the *Criminal Code* of Canada.

111. The *Nova Scotia Summary Proceedings Act*, S.N.S. 1972, c. 18, adopts the *Criminal Code* of Canada legislation as it applies to summary conviction offences.

Articles 6 and 7

112. The *Liberty of Subject Act*, R.S.N.S. 1967, c. 164, is the provincial *Habeas Corpus* legislation. It guarantees that there shall be no abrogation or abridgement of the remedy by the writ of habeas corpus at common law and guarantees that the remedy exists in full force and is the undoubted right of the people of this province. In addition to the habeas corpus remedy, the civil remedy is also preserved.

Article 10

113. The *Police Act*, S.N.S. 1974, c. 9, provides for the establishment of the Nova Scotia Police Commission, which has been in existence since 1974. The Police Commission develops and approves training programs designed to create between the public and police a mutual understanding of police functions, duties and responsibilities, and to promote police relationships with the community. The Attorney General may direct the Commission to inquire into and report to him upon any matter relating to complaints respecting the conduct and actions of police officers.

Article 11

114. The *Corrections Act*, S.N.S. 1986, c. 6, provides for the safe custody and security of offenders. Regulations under this Act ensure that all persons deprived of their liberty shall be treated with respect and dignity.

Article 12

115. Under the *Fatality Inquiries Act*, R.S.N.S. 1967, c. 101, where there is reasonable cause to suspect that a person died by violence, undue means or culpable negligence or in prison or under circumstances requiring an inquest under any other legislation or under undetermined cause, the provincial chief medical examiner shall make diligent inquiry respecting the cause and manner of death of the person and submit a report to the Attorney General who may direct further inquiry if necessary.

⁴ See note 1.

Article 14

116. The *Compensation for Victims of Crime Act*, S.N.S. 1975, c. 8, established the Criminal Injuries Compensation Board. This Board has the power to order compensation not only to the victim of the crime but also to a person who is responsible for the maintenance of the victim and to the victim's dependents where the death of the victim has resulted.

CHAPTER 7: ONTARIO

117. The Government of Ontario reviewed its legislation, programs and policies prior to Canada's ratification of the Convention in June, 1987, and keeps them under review. The Government is satisfied its policies, programs and practices are in compliance with the provisions of the Convention.

Article 2

118. Section 7 of the Regulations under the *Ministry of Correctional Services Act* prohibits any employee of the Ministry from using force against an inmate except in specific limited circumstances, such as in defence of an employee or inmate from assault, or to control a rebellious or disturbed inmate. The regulations require any employee who uses force to file a written report concerning the incident; all reports are reviewed by senior ministry staff.

Article 10

119. Correctional staff are specifically instructed in the use of force and the proper treatment of offenders during their basic training. The basic training program includes instruction on the United Nations conventions, the recent amendments to the *Criminal Code* with respect to torture, and the *Canadian Charter of Rights and Freedoms*. Refresher courses are conducted periodically to ensure that they remain current in correctional practices and procedures.

120. Ontario, through training programs offered at the Ontario Police College, has been in the practice of disseminating such information since well before the Convention was signed.

121. Specifically, the basic course which is compulsory for all police recruits in the province covers arrest procedures, the use of force, and the criminal and civil responsibility of officers who use excessive force. Twenty per cent of the course time is spent on practical exercises in which the officer's response to simulated occurrences is monitored and discussed. The Advanced Training Course for senior officers reviews the case law on the relevant principles embodied in the *Canadian Charter of Rights and Freedoms*. Similarly, at an even higher level, the Criminal Investigation Course for detectives covers this material as well.

Article 11

122. The Ministry of the Solicitor General is continually reviewing policies and procedures relating to incarceration and interrogation and, where necessary, administrative and policy directives to police officers are updated accordingly.

123. While most provincial custody situations are within the purview of the Ministry of Correctional Services, law enforcement agencies do detain persons in lock-up facilities as well. Various checks and balances are employed to ensure that torture and other forms of abuse are prevented. For example, cameras are generally present in holding cells and are monitored regularly. Individuals who are detained have the right to legal counsel and those who cannot afford to retain their own lawyer can get assistance through legal aid. In addition, the *Public Institutions Inspection Act*, administered by the Ministry of the Attorney General, provides for the inspection of lock-up facilities by a panel of independent inspectors which then reports on whether or not any persons are being held improperly or for an unreasonable length of time. This is all in addition to judicial supervision of detention, as provided in the *Criminal Code*.

124. At the basic, advanced and criminal investigation levels of training, law enforcement personnel are also briefed on evidentiary issues, including recommended interrogation procedures and the law which requires that statements must be voluntarily given or they will not be admissible in court proceedings.

125. The Ministry of Community and Social Services provides custody and predispositional detention facilities for young people arrested and detained under the *Young Offenders Act*. These residential programs are subject to licensing procedures and close monitoring by the Ministry.

126. A Custody Review Board reviews applications by young people committed to custody or detention facilities for a review of the following: a decision to hold a young person in, or transfer that person to, a maximum security place of custody; the particular place where the young person is held or to which that person has been transferred; a refusal to authorize the young person's temporary release; and the young person's transfer from a place of open custody to a place of secure custody.

Article 12

127. Any employee of the Ministry of Correctional Services who uses force is required to file a written report concerning the incident. All such reports are reviewed by senior ministry officials. When force is used against an inmate, the inmate must receive a prompt medical examination and any necessary treatment.

Article 13

128. Any inmate of a correctional institution who feels that he or she has been the subject of an improper use of force may do any of the following:

- (i) file a complaint with the superintendent of the institution;
- (ii) request an interview with a representative of the local police force to determine whether criminal proceedings are warranted;
- (iii) file a complaint with the office of the Ombudsman;
- (iv) request an interview with a Justice of the Peace to determine whether the circumstances warrant the laying of an information under the *Criminal Code*.

129. In 1981, the provincial government passed legislation which enables citizens who have complaints against officers employed by the Municipality of Metropolitan Toronto to file a complaint to a civilian agency.

130. Under this system, complaints are generally investigated by the police under the supervision of the civilian agency, and are reviewed by that agency. Complaints can range from minor matters to serious allegations such as assault. At the conclusion of the investigation, the officer may face a public hearing by a Board composed of civilians which has the power to dismiss him or her from the police force.

131. Members of the public who have complaints about officers outside of Metropolitan Toronto, can complain to the local police force and the Ontario Police Commission. Legislation has been introduced which, if passed, would permit the extension of the complaints procedure which now exists in Metropolitan Toronto to other parts of the province.

132. Every residential program caring for children is required to have a complaints procedure in place. Unsatisfied complainants may be directed to the Minister of Community and Social Services. An Office of Child and Family Service Advocacy has been established to co-ordinate and administer a system of advocacy on behalf of children and their families who receive services under the *Child and Family Services Act*.

133. Every children's aid society is required to have a clear review process for complaints with respect to the society's services. Unsatisfied complaints may be directed to a Director, an employee of the Ministry of Community and Social Services.

Article 14

134. Any victim of a crime of violence under the *Criminal Code*, a person responsible for the maintenance of the victim, or the dependants of the victim where the death of the victim has resulted from the violence may apply to the Criminal Injuries Compensation Board for compensation.

135. Compensation which may be awarded includes expenses incurred as a result of the injury or death, pecuniary loss, and compensation for pain and suffering. An application to the Board does not prevent a person from recovering damages by way of civil proceedings.

Article 15

136. The common law rule of evidence applies so that admissions obtained as a result of torture would not be admissible.

Article 16

137. Under the Ontario *Mental Health Act*, any patient has the absolute right to refuse any psychiatric treatment unless a finding of incompetency to consent to treatment is made. The patient who is found not competent to make treatment decisions may apply to a review board to challenge the doctor's finding; the board's decision can be appealed to the court. A patient who is over 16 and competent to do so has the right to appoint a representative

to make treatment decisions on his or her behalf. An involuntary patient, or authorized substitute decision-maker where the patient is considered incompetent, cannot consent to psychosurgery. A competent patient or patient's proxy can absolutely refuse electro-convulsive therapy.

138. Two specific provisions in the *Child and Family Services Act* act as a check on the abuse of State power during the child protection hearing process: legal representation of a child, at all stages of the child protection hearing (section 38); and media presence at the hearings (section 41).

139. Section 96 of the *Child and Family Services Act* prohibits the locking up of children, except in very limited circumstances that are governed either by a court order (Young Offenders or Secure Treatment) or a carefully regulated administrative process.

140. Section 97 of the Act prohibits corporal punishment of any child receiving services under the Act and applies not only to services provided by the Ministry of Community and Social Services but also to any agency funded or licensed by the Ministry.

141. Part VI of the Act regulates and carefully limits the use of intrusive treatment procedures and the use of psychotropic drugs. Part IX deals with residential programs caring for children, and prohibits the use of deliberate harsh or degrading measures which humiliate a resident and the depriving of a resident of basic needs including food, shelter, clothing and bedding.

CHAPTER 8: PRINCE EDWARD ISLAND

142. The legislation, policies, and programs of Prince Edward Island appear to be in compliance with the provisions of the Convention.

143. This report will address the articles of the Convention which deal with matters which are within provincial constitutional jurisdiction and which have been directly or indirectly addressed by legislation in this province.

Article 2(1)

144. Measures to prevent acts of torture in this jurisdiction include:

(a) Enactment and enforcement of the *Family and Child Services Act*, R.S.P.E.I. 1974, c. F-2.01, which authorizes the apprehension of children who, *inter alia*, have been physically abused, neglected, or sexually exploited, or who are in danger of consistently threatening behaviour, and which requires every person who has knowledge or reasonable and probable cause to believe that a child has been abused to report the case to the proper authority.

(b) Recent enactment of the *Adult Protection Act* (1988), which provides for government assistance or intervention to protect an adult who is unable to protect himself against neglect or abuse (the latter of which is defined as including offensive mistreatment, whether physical, sexual, mental, or emotional, or any combination that causes or is reasonably

likely to cause the victim, *inter alia*, psychological harm). The Act provides for the reporting of cases of persons in need of assistance or protection, and authorizes the court to make a protective intervention order.

(c) Enactment and enforcement of Regulations to the *Jails Act*, R.S.P.E.I. 1974, c. J-1, which provide for humane treatment of prisoners, and which prohibit correctional officers from using any form of violence on a prisoner except where absolutely necessary for self-defence or defence of another prisoner or jail employee or where necessary to control a rebellious or disturbed prisoner. In such cases, only the minimum of force necessary may be used, and a written report of the incident must be submitted immediately to the Superintendent of the facility. These Regulations also limit the penalties which may be imposed on prisoners who violate behaviour regulations. The penalties are limited to withdrawal of privileges, close confinement for up to no more than four days without approval of the Director, and forfeiture of statutory remission of sentence.

Article 7

145. This article is complied with by provincial enforcement of the federal *Criminal Code*'s prohibition of torture (s. 245.4), and of the Charter of Rights prohibition of cruel or inhuman treatment or punishment (s. 12).

Article 11

146. The objective of this article, which is to prevent cases of torture of persons arrested, detained, or imprisoned, are met by this province's *Jails Act* Regulations, which are set out under article 2.

Article 12

147. Suspected incidents of torture would be subject to police investigation as part of enforcement of the *Criminal Code* provisions.

148. In addition, two provincial laws, the *Coroners Act*, S.P.E.I. 1957, c. 10, and the *Vital Statistics Act*, R.S.P.E.I. 1974, c. V-6, require special investigations where a person appears to have died as a result of "violence," "misadventure," "unlawful means," "misconduct," or in other suspicious or sudden circumstances. (The *Vital Statistics Act* requires an investigation before a burial permit may be issued.)

149. The *Coroners Act* also requires every person who has reason to believe that a deceased person has died in any of the above circumstances to immediately notify the Coroner, and requires a jail superintendent or keeper to immediately notify the Coroner in any case of death of a prisoner in a jail, reformatory, or lock-up.

Article 14

150. Prince Edward Island has recently enacted a *Victims of Crime Act* (1988), which provides for public compensation for persons who have suffered harm, including physical or mental injury, emotional suffering, or economic loss by reason of acts which are in violation of criminal laws. This will, of course, include victims of torture under s. 245.4 of the *Criminal Code*.

Article 16

151. The provisions of the *Jails Act* Regulations (as noted under article 2) would appear to address the objectives of this article.

CHAPTER 9: QUÉBEC

152. Québec has undertaken to comply with the provisions of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, with the adoption, on June 10, 1987, of decree no. 912-87, in accordance with its internal law.

Legislative, administrative and judicial measures giving effect to articles 2, 6, 7 and 10 to 16 of the Convention

153. In June 1975, the Government of Québec adopted the *Charter of Human Rights and Freedoms*, which states that "Every human being has a right to life, and to personal security, inviolability and freedom." The Charter further stipulates that "Every person arrested or detained must be treated with humanity and with the respect due to the human person. [That person] has a right to immediately advise his next of kin thereof and to have recourse to the assistance of an advocate. He has a right to be informed promptly of those rights."

154. The Charter guards against virtually all abuses of the human rights protected by the Convention. However, administrative measures and special mechanisms have been put in place to ensure compliance with the provisions of the Convention.

Legislation

155. The Government of Québec carried out a review of all Québec legislation to ensure that it contains no provisions that might be considered inconsistent with the fundamental rights enshrined in the Convention. The findings of this review suggest that Québec's legislation does not contravene the provisions of the Convention.

156. In penal matters, Québec amended its *Code of Penal Procedures* (article 61) in order to incorporate "the rules of evidence in criminal matters, including the *Canada Evidence Act*." In civil matters, the Government of Québec plans to table in the National Assembly an amendment to the *Civil Code of Québec* on the admissibility of evidence. This amendment would disallow any evidence obtained in violation of fundamental rights and freedoms.

Corrections

157. The Government of Québec has adopted procedures guaranteeing respect for human dignity and governing the actions of correctional officers:

- directive on the interrogation of incarcerated persons (February 1985);
- directive on the admission of foreign nationals to provincial detention facilities (September 1986);

- directive on the reception of incarcerated persons in detention facilities (January 1987);
- directive on the admission of incarcerated persons to detention facilities (January 1987);
- directive on disciplinary infractions by incarcerated persons (January 1987).

158. Québec has also adopted a number of policies to guide its actions:

- policy on the custody of prisoners (March 1984);
- policy on the reception of incarcerated persons (November 1986);
- policy on temporary absences (November 1986);
- policy on pastoral services in detention facilities (November 1986);
- policy on the custody of accused persons (February 1987).

159. Furthermore, incarcerated persons may apply to the Public Protector and to the Québec Human Rights Commission, whose members and investigators may visit detention facilities at any time. Correspondence and meetings with incarcerated persons then constitute an exception to the usual examination. Thus any complaint of torture or other cruel, inhuman or degrading treatment can be dealt with immediately, and corrective action can be taken promptly.

160. Finally, the training and information given to employees are geared to respect for human rights and the reintegration of incarcerated persons into society.

Police

161. Directives and communications issued to police officers clearly reflect the principles set forth in the Convention.

162. Police training falls under the jurisdiction of the government, which is committed to the fundamental values of a free and democratic society as well as respect for the rights and freedoms of each individual.

163. Québec police officers are governed by a code of ethics which promotes the maintenance of discipline and ethical conduct, as well as respect for human rights, and condemns reprehensible actions.

164. A quasi-judicial government body, the Québec Police Commission, may intervene and investigate cases of police wrongdoing that are submitted to it. This body also makes recommendations to Québec police forces.

165. Furthermore, every resident of Québec has free access to the courts, both criminal and civil, to enforce his rights against any police action that he considers improper.

CHAPTER 10: SASKATCHEWAN

166. This report outlines the legislation, regulation, policies and programs in place as of February 29, 1988, which are relevant to the implementation of the Convention in Saskatchewan.

Article 6(3)

167. It is the policy in Saskatchewan adult correctional institutions to facilitate visits, phone calls and written communications by and to inmates. This includes contact with immigration authorities, national ambassadors, and so forth.

Article 10

168. Persons involved with the custody, interrogation or treatment of individuals subject to arrest, detention or imprisonment are provided with general information regarding obligations and potential liability resulting from their treatment of persons in their charge.

169. In addition, with respect to police officers, criminal law courses at the Royal Canadian Mounted Police Academy and at the Saskatchewan Police College include several hours of instruction on arrest and detention, and potential implications of the provisions of the *Canadian Charter of Rights and Freedoms*. This instruction is consistent with the spirit of the Convention.

170. In the case of adult correctional centres, an important objective is to provide and maintain safe and humane custody, control and care for persons sentenced or remanded by the courts. Therefore, a divisional directive on the use of force indicates that all staff are to be trained in the use of force as a means of inmate control. Training is consistent with the intent of Article 10. For example, the policy manual clearly indicates that physical restraint cannot be used as a form of punishment, disciplinary sanction or treatment for mental disorder.

171. In the context of young offenders, staff receive basic human rights training related to *The Saskatchewan Human Rights Code*, R.S.S. 1978, c. S-24.1, and the *Canadian Charter of Rights and Freedoms*. Limitations on the use of physical force and restraint as applied to young offenders held in custody is set out in departmental policy, and is reinforced at the introductory training session provided to all new staff.

172. In the provincial health care system, staff are educated concerning their obligations, and patients are advised of their rights. Staff of all professional disciplines employed in mental health facilities are apprised of appropriate professional and ethical standards to be applied in the treatment of patients.

173. Regarding the mentally retarded, staff receive training with respect to Department of Social Services policies and procedures relevant to the appropriate treatment of patients.

Article 11

174. In the context of young offenders, departmental policy specifically prohibits assault by staff members.

175. As regards police officers, the *Royal Canadian Mounted Police Act*, R.S.C. 1970, c. R-9, and *The Police Act*, R.S.S. 1978, c. P-15, provide specific offences for abuse of prisoners or other persons.

Article 12

176. The *Royal Canadian Mounted Police Act* and *The Police Act* require that complaints of police brutality be thoroughly investigated.

177. The Department of Social Services' policy with respect to young offenders outlines the procedures to be followed during an investigation of an apparent or alleged assault. The Directive Respecting Incidents Involving the Possibility of Assaults of a Resident by a Staff Member outlines the role of the facility director in terms of conducting an investigation into an alleged assault. Where an allegation of abuse has been made, the police may be included in the investigation, depending upon the wishes of the client and the evidence which is available during the departmental review.

Article 13

178. The *Royal Canadian Mounted Police Act* and *The Police Act* set out procedures for the investigation of complaints brought by members of the public against the police.

179. Inmates in provincial adult correctional centres have access to an internal grievance procedure. They may also seek redress through the legal system or through the Office of the Ombudsman.

Article 14

180. A victim of torture in Saskatchewan could bring a civil suit to claim compensation from the torturer. If the victim dies, an action for compensation can be brought under *The Fatal Accidents Act*, R.S.S. 1978, c. F-11, in favour of the spouse, parent, and child of the victim. "Parent" and "child" are defined very broadly.

Article 16

181. The use of physical force against young offenders is not permitted except when necessary to restrain a young person who is in danger of harming himself or another, to prevent property damage, or to maintain security and order. It may not be employed as a means of punishment. Physical restraint is permitted only for safety or security reasons and is not to be used when other feasible alternatives are available. When physical force is used, only authorized measures may be employed, the degree of force must be the minimum amount required, and the force must be discontinued at the earliest opportunity.

182. Based on Department of Health legislation, regulation and policies, voluntary patients in health care facilities may only be subjected to treatment to which they consent. Involuntary patients in mental health facilities who are not considered competent to consent to treatment may be treated without consent, subject to three conditions: (1) the doctor must explain the treatment and consider the patient's views, (2) electroconvulsive therapy requires an examination and endorsement of certificates by two psychiatrists, and (3) psychosurgery

and experimental treatment are prohibited. Where electroconvulsive therapy is ordered, prior to commencement of the treatment, the Official Representative is notified and an appeal may be taken to the Review Panel. Patients are advised of their rights by means of a brochure.

183. In the context of the mentally retarded, Social Services policy prohibits treatment which could be termed cruel or unusual. Specific guidelines regarding acceptable and inappropriate treatment are set out in departmental policy.

C. MEASURES ADOPTED BY THE GOVERNMENTS OF THE TERRITORIES

CHAPTER 1: NORTHWEST TERRITORIES

Article 2

184. A review of Northwest Territories legislation was conducted in 1987. No provisions which could permit torture were identified, and therefore no amendments were necessary to make our legislation comply with Article 2 of the Convention.

185. Nothing whatsoever in Northwest Territories law or policy may be invoked as a justification for torture.

186. No Northwest Territories officer or agency is entitled or authorized to order torture, or to justify its use.

Article 14

187. An amendment was made to the Northwest Territories *Criminal Injuries Compensation Act* to include the new torture provision from the *Criminal Code* in the Schedule of Offences for which victims, dependants of the victims and persons responsible for the maintenance of the victims may be compensated. It would also be open for a victim of torture, or his dependants, to pursue a civil action against the perpetrator of the torture.

CHAPTER 2: YUKON

Introduction

188. The Government of Yukon has enacted legislation against torture, the *Torture Prohibition Act*, which came into effect January 8, 1988. The legislation was adopted as a means of implementing the Convention in areas of jurisdiction of the Yukon Territory. The Preamble to the Act states:

"Recognizing that Canada is a party to the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The Commissioner of the Yukon Territory, by and with the advice and consent of the Legislative Assembly, enacts as follows."

189. The provisions of the Act follow closely the language of the relevant provisions of the Convention.

190. The *Torture Prohibition Act* deals primarily with the civil aspects of acts of torture (the criminal aspects are covered by the *Criminal Code* of Canada, as explained in the federal section), rendering the person who commits torture liable to pay damages to the victim of the torture. The provisions of the Act apply mainly to articles 1, 2, 14 and 15 of the Convention.

191. The Act applies to public officials and to every person acting at the instigation of or with the consent or acquiescence of a public official. "Public official" includes a peace officer and any person in the public service of the Yukon (a) who is authorized to do or enforce the doing of any act or thing or to exercise any power, or (b) upon whom any duty is imposed by or under any act.

Article 1

192. The definition of "torture" in the *Torture Prohibition Act* is very similar to the definition adopted in article 1 of the Convention and reads as follows:

"torture" means any act or omission by which severe pain or severe suffering, whether physical or mental, is intentionally inflicted on a person

(a) for a purpose including

- (i) obtaining from the person or from a third person information or a statement,
- (ii) punishing the person for an act that the person or a third person has committed or is suspected of having committed, or
- (iii) intimidating or coercing the person or a third person or

(b) for any reason based on discrimination of any kind,

but does not include any act or omission arising from, inherent in, or incidental to lawful sanctions.

Article 2

193. Section 3(1) of the *Torture Prohibition Act* provides that, in an action under section 1 of the Act, it is no defence that the defendant was ordered by a superior or a public authority to perform the act or omission that forms the subject matter of the action, nor that the act or omission is alleged to have been justified by exceptional circumstances such as a state of war, a threat of war, internal political instability or any other public emergency.

Article 14

194. Section 1 of the *Torture Prohibition Act* establishes liability for acts of torture by stating that every public official, and every person acting at the instigation of or with the consent or acquiescence of a public official, who inflicts torture on any other person

commits a tort and is liable and renders his or her employer liable to pay damages to the victim of the torture.

195. Section 2 provides guidance for the calculation of damages to be awarded to the victims of torture. It states that, in an action under section 1, the court shall calculate the damages according to the principles applicable in cases of battery, assault, intimidation, negligence, or whichever other tort seems most closely analogous to the torture that was inflicted.

196. Compensation is also available, under the *Compensation for the Victims of Crime Act*, R.S.Y.T. 1986, c. 27, for the victim of a crime, a person responsible for the maintenance of the victim, and the victim's dependants, and, under the *Fatal Accidents Act*, R.S.Y.T. 1986, c. 64, for members of the family of the deceased person, where the death is caused by wrongful act, neglect or default.

Article 15

197. Section 4 of the *Torture Prohibition Act* provides that, in any proceedings over which the Yukon Legislature has jurisdiction, any statement obtained as a result of torture is inadmissible in evidence except as evidence that the statement was obtained by torture.

A N N E X E S

The Annexes to this report, except Annex 1 which was attached to the report as submitted to the United Nations, have been added for purposes of Canadian publication.

ANNEX 1: LIST OF DOCUMENTS SUBMITTED WITH THE PRESENT REPORT

CANADA

- Appendix 1 *Canadian Charter of Rights and Freedoms*
- Appendix 2 Court cases referred to in the report
- Appendix 3 *An Act to amend the Criminal Code (Torture)*
- Appendix 4 *Canadian Bill of Rights*
Relevant sections of the *Criminal Code*
- Appendix 5 Relevant sections of the *Royal Canadian Mounted Police Act* and of the Operational Manual
- Appendix 6 Correctional Service of Canada materials
- Appendix 7 Canada-Netherlands Treaty, Article XVII
- Appendix 8 *Canada Evidence Act*, s.43
- Appendix 9 *An Act to amend the Royal Canadian Mounted Police Act*
- Appendix 10 Inmate Rights and Responsibilities -- An information handbook for Inmates of federal correctional institutions
- Appendix 11 Federal government proposals to assist victims of crime

ALBERTA

- 1. *Corrections Act*
- 2. *The Correctional Institution Regulations* (Alberta Regulation #138/77)
- 3. *Fatality Inquiries Act*
- 4. *Public Inquiries Act*
- 5. *Ombudsman Act*
- 6. *Criminal Injuries Compensation Act*
- 7. *Fatal Accidents Act*
- 8. *Proceedings Against the Crown Act*
- 9. *Child Welfare Act*

BRITISH COLUMBIA

1. Ombudsman 1986 Annual Report, extracts
2. Riverview Hospital -- Policies and Procedures -- Policy A-42: Patient Abuse
3. Beliefs, Goals and Strategies, B.C. Corrections Branch, Ministry of Attorney General
4. Correctional Centre Rules and Regulations 1986, Corrections Branch, Ministry of Attorney General

MANITOBA

The Corrections Act, C.C.S.M., C. C230

The Criminal Injuries Compensation Act, R.S.M. 1987, c. C305

The Fatality Inquiries Act, R.S.M. 1987, c. F52

The Law Enforcement Review Act, R.S.M. 1987, c. L75

The Mental Health Act, R.S.M. 1987, c. M110

The Ombudsman Act, R.S.M. 1987, c. O45

The Provincial Police Act, R.S.M. 1987, c. P150

NOVA SCOTIA

Government of Nova Scotia Policy Statement on the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

YUKON

Torture Prohibition Act

ANNEX 2: CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

The States Parties to this Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that those rights derive from the inherent dignity of the human person,

Considering the obligation of States under the Charter, in particular Article 55, to promote universal respect for, and observance of, human rights and fundamental freedoms,

Having regard to article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights, both of which provide that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment,

Having regard also to the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly on 9 December 1975,

Desiring to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world,

Have agreed as follows:

PART I

Article 1

1. For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

Article 2

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

Article 3

1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

Article 4

1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.

2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

Article 5

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases:

(a) When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;

(b) When the alleged offender is a national of that State;

(c) When the victim is a national of that State if that State considers it appropriate.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph 1 of this article.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

Article 6

1. Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed any offence referred to in article 4 is present shall take him into custody or take other legal measures to ensure his presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

2. Such State shall immediately make a preliminary inquiry into the facts.

3. Any person in custody pursuant to paragraph 1 of this article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national, or, if he is a stateless person, with the representative of the State where he usually resides.

4. When a State, pursuant to this article, has taken a person into custody, it shall immediately notify the States referred to in article 5, paragraph 1, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

Article 7

1. The State Party in the territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution.

2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. In the cases referred to in article 5, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 5, paragraph 1.

3. Any person regarding whom proceedings are brought in connection with any of the offences referred to in article 4 shall be guaranteed fair treatment at all stages of the proceedings.

Article 8

1. The offences referred to in article 4 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of such offences. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 5, paragraph 1.

Article 9

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of any of the offences referred to in article 4, including the supply of all evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 of this article in conformity with any treaties on mutual judicial assistance that may exist between them.

Article 10

1. Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

2. Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such persons.

Article 11

Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

Article 12

Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

Article 13

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

Article 14

1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.

2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.

Article 15

Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

Article 16

1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.

2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion.

PART II

Article 17

1. There shall be established a Committee against Torture (hereinafter referred to as the Committee) which shall carry out the functions hereinafter provided. The Committee shall consist of ten experts of high moral standing and recognized competence in the field of human rights, who shall serve in their personal capacity. The experts shall be elected by the States Parties, consideration being given to equitable geographical distribution and to the usefulness of the participation of some persons having legal experience.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals. States Parties shall bear in mind the usefulness of nominating persons who are also members of the Human Rights Committee established under the International Covenant on Civil and Political Rights and who are willing to serve on the Committee against Torture.

3. Elections of the members of the Committee shall be held at biennial meetings of States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

4. The initial election shall be held no later than six months after the date of the entry into force of this Convention. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

5. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these five members shall be chosen by lot by the chairman of the meeting referred to in paragraph 3 of this article.

6. If a member of the Committee dies or resigns or for any other cause can no longer perform his Committee duties, the State Party which nominated him shall appoint another expert from among its nationals to serve for the remainder of his term, subject to the approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.

7. States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties.

Article 18

1. The Committee shall elect its officers for a term of two years. They may be re-elected.
2. The Committee shall establish its own rules of procedure, but these rules shall provide, *inter alia*, that:
 - (a) Six members shall constitute a quorum;
 - (b) Decisions of the Committee shall be made by a majority vote of the members present.
3. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under this Convention.
4. The Secretary-General of the United Nations shall convene the initial meeting of the Committee. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.
5. The States Parties shall be responsible for expenses incurred in connection with the holding of meetings of the States Parties and of the Committee, including reimbursement to the United Nations for any expenses, such as the cost of staff and facilities, incurred by the United Nations pursuant to paragraph 3 of this article.

Article 19

1. The States Parties shall submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have taken to give effect to their undertakings under this Convention, within one year after the entry into force of the Convention for the State Party concerned. Thereafter the States Parties shall submit supplementary reports every four years on any new measures taken and such other reports as the Committee may request.
2. The Secretary-General of the United Nations shall transmit the reports to all States Parties.
3. Each report shall be considered by the Committee which may make such general comments on the report as it may consider appropriate and shall forward these to the State Party concerned. That State Party may respond with any observations it chooses to the Committee.
4. The Committee may, at its discretion, decide to include any comments made by it in accordance with paragraph 3 of this article, together with the observations thereon received from the State Party concerned, in its annual report made in accordance with article 24. If so requested by the State Party concerned, the Committee may also include a copy of the report submitted under paragraph 1 of this article.

Article 20

1. If the Committee receives reliable information which appears to it to contain well-founded indications that torture is being systematically practised in the territory of a State Party, the Committee shall invite that State Party to co-operate in the examination of the information and to this end to submit observations with regard to the information concerned.
2. Taking into account any observations which may have been submitted by the State Party concerned, as well as any other relevant information available to it, the Committee may, if it decides that this is

warranted, designate one or more of its members to make a confidential inquiry and to report to the Committee urgently.

3. If an inquiry is made in accordance with paragraph 2 of this article, the Committee shall seek the co-operation of the State Party concerned. In agreement with that State Party, such an inquiry may include a visit to its territory.

4. After examining the findings of its member or members submitted in accordance with paragraph 2 of this article, the Committee shall transmit these findings to the State Party concerned together with any comments or suggestions which seem appropriate in view of the situation.

5. All the proceedings of the Committee referred to in paragraphs 1 to 4 of this article shall be confidential, and at all stages of the proceedings the co-operation of the State Party shall be sought. After such proceedings have been completed with regard to an inquiry made in accordance with paragraph 2, the Committee may, after consultations with the State Party concerned, decide to include a summary account of the results of the proceedings in its annual report made in accordance with article 24.

Article 21

1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under this Convention. Such communications may be received and considered according to the procedures laid down in this article only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be dealt with by the Committee under this article if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:

(a) If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation or any other statement in writing clarifying the matter, which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending or available in the matter;

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;

(c) The Committee shall deal with a matter referred to it under this article only after it has ascertained that all domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention;

(d) The Committee shall hold closed meetings when examining communications under this article;

(e) Subject to the provisions of subparagraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for the obligations provided for in this Convention. For this purpose, the Committee may, when appropriate, set up an *ad hoc* conciliation commission;

(f) In any matter referred to it under this article, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;

(g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered by the Committee and to make submissions orally and/or in writing;

(h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b), submit a report:

- (i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;
- (ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report.

In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 22

1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration.

2. The Committee shall consider inadmissible any communication under this article which is anonymous or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of this Convention.

3. Subject to the provisions of paragraph 2, the Committee shall bring any communications submitted to it under this article to the attention of the State Party to this Convention which has made a declaration under paragraph 1 and is alleged to be violating any provisions of the Convention. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

4. The Committee shall consider communications received under this article in the light of all information made available to it by or on behalf of the individual and by the State Party concerned.

5. The Committee shall not consider any communications from an individual under this article unless it has ascertained that:

(a) The same matter has not been, and is not being, examined under another procedure of international investigation or settlement;

(b) The individual has exhausted all available domestic remedies; this shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention.

6. The Committee shall hold closed meetings when examining communications under this article.

7. The Committee shall forward its views to the State Party concerned and to the individual.

8. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by or on behalf of an individual shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party has made a new declaration.

Article 23

The members of the Committee and of the *ad hoc* conciliation commissions which may be appointed under article 21, paragraph 1 (*e*), shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 24

The Committee shall submit an annual report on its activities under this Convention to the States Parties and to the General Assembly of the United Nations.

PART III

Article 25

1. This Convention is open for signature by all States.
2. This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 26

This Convention is open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 27

1. This Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying this Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

Article 28

1. Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not recognize the competence of the Committee provided for in article 20.
2. Any State Party having made a reservation in accordance with paragraph 1 of this article may, at any time, withdraw this reservation by notification to the Secretary-General of the United Nations.

Article 29

1. Any State Party to this Convention may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted by the Secretary-General to all the States Parties for acceptance.
2. An amendment adopted in accordance with paragraph 1 of this article shall enter into force when two thirds of the States Parties to this Convention have notified the Secretary-General of the United Nations that they have accepted it in accordance with their respective constitutional processes.

3. When amendments enter into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of this Convention and any earlier amendments which they have accepted.

Article 30

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by paragraph 1 of this article with respect to any State Party having made such a reservation.

3. Any State Party having made a reservation in accordance with paragraph 2 of this article may at any time withdraw this reservation by notification to the Secretary-General of the United Nations.

Article 31

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under this Convention in regard to any act or omission which occurs prior to the date at which the denunciation becomes effective, nor shall denunciation prejudice in any way the continued consideration of any matter which is already under consideration by the Committee prior to the date at which the denunciation becomes effective.

3. Following the date at which the denunciation of a State Party becomes effective, the Committee shall not commence consideration of any new matter regarding that State.

Article 32

The Secretary-General of the United Nations shall inform all States Members of the United Nations and all States which have signed this Convention or acceded to it of the following:

- (a) Signatures, ratifications and accessions under articles 25 and 26;
- (b) The date of entry into force of this Convention under article 27 and the date of the entry into force of any amendments under article 29;
- (c) Denunciations under article 31.

Article 33

1. This Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States.

ANNEX 3: LIST OF STATES WHICH HAVE SIGNED, RATIFIED OR ACCEDED
TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN
OR DEGRADING TREATMENT OR PUNISHMENT AS AT 10 NOVEMBER 1988*

<u>State</u>	<u>Date of signature</u>	<u>Date of receipt of the instrument of ratification or accession</u>
Afghanistan	4 February 1985	1 April 1987
Algeria	26 November 1985	
Argentina <u>a/</u>	4 February 1985	24 September 1986
Australia	10 December 1985	
Austria <u>a/</u>	14 March 1985	29 July 1987
Belgium	4 February 1985	
Belize		17 March 1986 <u>b/</u>
Bolivia	4 February 1985	
Brazil	23 September 1985	
Bulgaria	10 June 1986	16 December 1986
Byelorussian Soviet Socialist Republic	19 December 1985	13 March 1987
Cameroon		19 December 1986 <u>b/</u>
Canada	23 August 1985	24 June 1987
Chile	23 September 1987	30 September 1988
China	12 December 1986	4 October 1988
Colombia	10 April 1985	8 December 1987
Costa Rica	4 February 1985	
Cuba	27 January 1986	
Cyprus	9 October 1985	
Czechoslovakia	8 September 1986	7 July 1988
Denmark <u>a/</u>	4 February 1985	27 May 1987
Dominican Republic	4 February 1985	
Ecuador <u>a/</u>	4 February 1985	30 March 1988
Egypt		25 June 1986 <u>b/</u>
Finland	4 February 1985	
France <u>a/</u>	4 February 1985	18 February 1986
Gabon	21 January 1986	
Gambia	23 October 1985	
German Democratic Republic	7 April 1986	9 September 1987
Germany, Federal Republic of	13 October 1986	
Greece <u>a/</u>	4 February 1985	6 October 1988
Guinea	30 May 1986	
Guyana	25 January 1988	19 May 1988
Hungary	28 November 1986	15 April 1987
Iceland	4 February 1985	
Indonesia	23 October 1985	
Israel	22 October 1986	
Italy	4 February 1985	
Liechtenstein	27 June 1985	
Luxembourg <u>a/</u>	22 February 1985	29 September 1987
Mexico	18 March 1985	23 January 1986
Morocco	8 January 1986	
Netherlands	4 February 1985	
New Zealand	14 January 1986	
Nicaragua	15 April 1985	
Nigeria	28 July 1988	
Norway <u>a/</u>	4 February 1985	9 July 1986
Panama	22 February 1985	24 August 1987

* Extract from United Nations' Document E/CN.4/1989/17, dated 8 December 1988

<u>State</u>	<u>Date of signature</u>	<u>Date of receipt of the instrument of ratification or accession</u>
Peru	29 May 1985	7 July 1988
Philippines		18 June 1986 <u>b/</u>
Poland	13 January 1986	
Portugal	4 February 1985	
Senegal	4 February 1985	21 August 1986
Sierra Leone	18 March 1985	
Spain <u>a/</u>	4 February 1985	21 October 1987
Sudan	4 June 1986	
Sweden <u>a/</u>	4 February 1985	8 January 1986
Switzerland <u>a/</u>	4 February 1985	2 December 1986
Togo <u>a/</u>	25 March 1987	18 November 1987
Tunisia <u>a/</u>	26 August 1987	23 September 1988
Turkey <u>a/</u>	25 January 1988	2 August 1988
Uganda		3 November 1986 <u>b/</u>
Ukrainian Soviet Socialist Republic	27 February 1986	24 February 1987
Union of Soviet Socialist Republics	10 December 1985	3 March 1987
United Kingdom of Great Britain and Northern Ireland	15 March 1985	
United States of America	18 April 1988	
Uruguay <u>a/</u>	4 February 1985	24 October 1986
Venezuela	15 February 1985	

Notes

- a/ Made the declarations under articles 21 and 22 of the Convention
b/ Accession

ANNEX 4: COMMITTEE AGAINST TORTURE

There shall be established a Committee against Torture (hereinafter referred to as the Committee) which shall carry out the functions hereinafter provided. The Committee shall consist of ten experts of high moral standing and recognized competence in the field of human rights, who shall serve in their personal capacity. The experts shall be elected by the States Parties, consideration being given to equitable geographical distribution and to the usefulness of the participation of some persons having legal experience. (Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment - Article 17.1)

At the first meeting of the States Parties to the Convention which was held on 26 November 1987, the following experts were elected members of the Committee against Torture:

<u>NAME OF MEMBER</u>	<u>COUNTRY OF NATIONALITY</u>	<u>TERM EXPIRES ON 31 DECEMBER</u>
Mr. Alfredo R.A. BENGZON	Philippines	1991
Mr. Peter Thomas BURNS	Canada	1991
Ms. Christine CHANET	France	1991
Ms. Socorro DIAZ PALACIOS	Mexico	1991
Mr. Alexis DIPANDA MOUELLE	Cameroon	1989
Mr. Ricardo GIL LAVEDRA	Argentina	1991
Mr. Yuri A. KHITRIN	Union of Soviet Socialist Republics	1989
Mr. Dimitar Nikolov MIKHAILOV	Bulgaria	1989
Mr. Bent SØRENSEN	Denmark	1989
Mr. Joseph VOYAME	Switzerland	1989

The Committee against Torture held its first session in Geneva, from 18 to 22 April 1988. The results of the deliberations of the Committee at its first session are contained in the summary records of its meetings at that session (document CAT/C/SR.1-SR.7) and in its first annual report (Official Records of the General Assembly, Forty-third Session, Supplement No. 46 (A/43/46)).

The Committee held its second session in Geneva from April 17 to 28, 1989. Its next session is scheduled for the end of November 1989. Canada's initial report will be reviewed at that session.

The mandate of the Committee against Torture is defined at Part II of the Convention, especially in articles 19 to 22 (see annex 2).

ANNEX 5: UNITED NATIONS VOLUNTARY FUND FOR VICTIMS OF TORTURE

In December 1981, the General Assembly of the United Nations established the United Nations Voluntary Fund for Victims of Torture for the purpose of receiving voluntary contributions for distribution, through established channels of assistance, as humanitarian, legal and financial aid to individuals who have been tortured and to their relatives.

The Voluntary Fund is administered by the Secretary-General of the United Nations, with the advice of a Board of Trustees, whose members are appointed by the Secretary-General in consultation with their Governments.

The Board of Trustees promotes the Fund and solicits contributions to it from governments, organizations, private institutions and individuals. Canada has contributed to the Fund each year since 1983. These contributions totalled \$160,000 at March 31, 1989.

The Fund receives applications for grants submitted by institutions, organizations or groups which set up specific projects aiding torture victims. Grants are made to projects in different countries, giving priority to those providing direct medical or psychological assistance.

The Fund is also co-operating with centres for the treatment and rehabilitation of torture victims, one of which is the Canadian Centre for Victims of Torture established in Toronto. It has given financial support for the training of doctors and other medical personnel in methods of treatment of torture victims and for providing assistance in other parts of the world.

**ANNEX 6: OUTLAWING TORTURE: A SAMPLE OF MEASURES
ADOPTED IN CANADA AND AROUND THE WORLD**

Date of adoption	Title	Most relevant section(s)
A. Canada		
1960, August 10	Canadian Bill of Rights	Section 2(b)
1982, April 17	Canadian Charter of Rights and Freedoms	Section 12
1987, June 1	Criminal Code of Canada (Amendment)(see Annex 7)	Section 245-4
B. United Nations		
1948, December 10	Universal Declaration of Human Rights	Article 5
1957, July 31	Standard Minimum Rules for the Treatment of Prisoners	Rule 31
1966, December 16	International Covenant on Civil and Political Rights	Articles 7, 10
1974, December 14	Declaration on the Protection of Women and Children in Emergency and Armed Conflict	Paragraph 5
1975, December 9	Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	All articles
1979, December 17	Code of Conduct for Law Enforcement Officers	Article 5
1982, December 18	Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	Principles 2, 4
1984, December 10	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (see Annex 2)	All articles
C. Humanitarian Law		
1949, August 12	Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field	Articles 3, 12
1949, August 12	Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea	Articles 3, 12
1949, August 12	Geneva Convention Relative to the Treatment of Prisoners of War	Articles 3, 13, 17, 89, 99
1949, August 12	Geneva Convention Relative to the Protection of Civilian Persons in Time of War	Articles 3, 16, 27, 31-34, 37, 118-119

1977, June 10	Protocols Additional to the Geneva Conventions	
	Protocol I (International Armed Conflicts)	Articles 10-11, 75
	Protocol II (Non-international Armed Conflicts)	Articles 4-5, 7-8
D. Europe		
1950, November 4	European Convention on Human Rights	Article 3
1987, June 26	European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment	All articles
E. The Americas		
1969, November 22	American Convention on Human Rights	Article 5
1985, December 9	Inter-American Convention to Prevent and Punish Torture	All articles
F. Africa		
1981, June	African Charter on Human and Peoples' Rights	Articles 4-5

ANNEX 7

35-36 ELIZABETH II

35-36 ELIZABETH II

CHAPTER 13

CHAPITRE 13

An Act to amend the Criminal Code
(torture)

Loi modifiant le Code criminel (torture)

[Assented to 14th April, 1987]

[Sanctionnée le 14 avril 1987]

R.S., c. C-34

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Sa Majesté, sur l'avis et avec le consentement du Sénat et de la Chambre des communes du Canada, édicte :

S.R., ch. C-34

1. Section 6 of the *Criminal Code* is amended by adding thereto, immediately after subsection (1.8) thereof, the following subsection:

1. L'article 6 du *Code criminel* est modifié par insertion, après le paragraphe (1.8), de ce qui suit :

Jurisdiction

“(1.9) Notwithstanding anything in this Act or any other Act, every one who, outside Canada, commits an act or omission that, if committed in Canada, would constitute an offence against, a conspiracy or an attempt to commit an offence against, being an accessory after the fact in relation to an offence against, or any counselling in relation to an offence against, section 245.4 shall be deemed to commit that act or omission in Canada if

«(1.9) Nonobstant la présente loi et toute autre loi, la personne qui, à l'extérieur du Canada, commet un acte par action ou omission qui, s'il était commis au Canada, constituerait une infraction, un complot, une tentative, un conseil ou une complicité après le fait à l'égard d'une infraction à l'article 245.4, est réputée avoir commis cet acte au Canada si, selon le cas :

Torture

(a) the act or omission is committed on a ship that is registered or licensed, or for which an identification number has been issued, pursuant to any Act of Parliament;

a) l'acte est commis à bord d'un navire qui est immatriculé en conformité avec une loi du Parlement ou à l'égard duquel un permis ou un numéro d'identification a été délivré en conformité avec une telle loi;

(b) the act or omission is committed on an aircraft

b) l'acte est commis à bord d'un aéronef :

(i) registered in Canada under regulations made under the *Aeronautics Act*, or

(i) soit immatriculé au Canada en vertu des règlements d'application de la *Loi sur l'aéronautique*,

(ii) leased without crew and operated by a person who is qualified under regulations made under the *Aeronautics Act* to be registered as owner of

(ii) soit loué sans équipage et mis en service par une personne remplissant, aux termes des règlements d'application de la *Loi sur l'aéronautique*, les

an aircraft in Canada under those regulations;

(c) the person who commits the act or omission is a Canadian citizen;

(d) the complainant is a Canadian citizen; or

(e) the person who commits the act or omission is, after the commission thereof, present in Canada."

2. The said Act is further amended by adding thereto, immediately after section 245.3 thereof, the following section:

Torture

"245.4 (1) Every official, or every person acting at the instigation of or with the consent or acquiescence of an official, who inflicts torture on any other person is guilty of an indictable offence and is liable to imprisonment for a term not exceeding fourteen years.

Definitions

"official"
«fonctionnaire»

(2) For the purposes of this section, "official" means
(a) a peace officer,
(b) a public officer,
(c) a member of the Canadian Forces, or
(d) any person who may exercise powers, pursuant to a law in force in a foreign state, that would in Canada be exercised by a person referred to in paragraph (a), (b), or (c),
whether the person exercises powers in Canada or outside Canada;

"torture"
«torture»

"torture" means any act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person
(a) for a purpose including
(i) obtaining from the person or from a third person information or a statement,
(ii) punishing the person for an act which that person or a third person has committed or is suspected of having committed, and
(iii) intimidating or coercing the person or a third person, or
(b) for any reason based on discrimination of any kind,

conditions d'inscription comme propriétaire d'un aéronef au Canada en vertu de ces règlements;

c) l'auteur de l'acte a la citoyenneté canadienne;

d) le plaignant a la citoyenneté canadienne;

e) l'auteur de l'acte se trouve au Canada après la perpétration de celui-ci.»

2. La même loi est modifiée par insertion, après l'article 245.3, de ce qui suit :

Torture

«245.4 (1) Est coupable d'un acte criminel et passible d'un emprisonnement maximal de quatorze ans le fonctionnaire qui — ou la personne qui, avec le consentement exprès ou tacite d'un fonctionnaire ou à sa demande — torture une autre personne.

Définitions

(2) Les définitions qui suivent s'appliquent au présent article.

«fonctionnaire» L'une des personnes suivantes, qu'elle exerce ses pouvoirs au Canada ou à l'extérieur du Canada :

«fonctionnaire»
"official"

a) un agent de la paix;
b) un fonctionnaire public;
c) un membre des forces canadiennes;
d) une personne que la loi d'un État étranger investit de pouvoirs qui, au Canada, seraient ceux d'une personne mentionnée à l'un des alinéas a), b) ou c).

«torture» Acte, commis par action ou omission, par lequel une douleur ou des souffrances aiguës, physiques ou mentales, sont intentionnellement infligées à une personne :

«torture»
"torture"

a) soit afin notamment :
(i) d'obtenir d'elle ou d'une tierce personne des renseignements ou une déclaration,
(ii) de la punir d'un acte qu'elle ou une tierce personne a commis ou est soupçonnée d'avoir commis,
(iii) de l'intimider ou de faire pression sur elle ou d'intimider une tierce personne ou de faire pression sur celle-ci;

1987

Code criminel (torture)

ch. 13

but does not include any act or omission arising only from, inherent in or incidental to lawful sanctions.

b) soit pour tout autre motif fondé sur quelque forme de discrimination que ce soit.

La torture ne s'entend toutefois pas d'actes qui résultent uniquement de sanctions légitimes, qui sont inhérents à celles-ci ou occasionnés par elles.

No defence

(3) It is no defence to a charge under this section that the accused was ordered by a superior or a public authority to perform the act or omission that forms the subject-matter of the charge, nor that the act or omission is alleged to have been justified by exceptional circumstances, including a state of war, a threat of war, internal political instability or any other public emergency.

(3) Ne constituent pas un moyen de défense contre une accusation fondée sur le présent article ni le fait que l'accusé a obéi aux ordres d'un supérieur ou d'une autorité publique en commettant les actes qui lui sont reprochés ni le fait que ces actes auraient été justifiés par des circonstances exceptionnelles, notamment un état de guerre, une menace de guerre, l'instabilité politique intérieure ou toute autre situation d'urgence.

Inadmissibilité de certains moyens de défense

Evidence

(4) In any proceedings over which Parliament has jurisdiction, any statement obtained as a result of the commission of an offence under this section is inadmissible in evidence except as evidence that the statement was so obtained."

(4) Dans toute procédure qui relève de la compétence du Parlement, une déclaration obtenue par la perpétration d'une infraction au présent article est inadmissible en preuve, sauf à titre de preuve de cette infraction.»

Admissibilité en preuve

Coming into force

3. This Act shall come into force on a day to be fixed by proclamation.

3. La présente loi entre en vigueur à la date fixée par proclamation.

Entrée en vigueur

ANNEX 8: SOME SUGGESTED READINGS

American Association for the Advancement of Science, *THE BREAKING OF BODIES AND MINDS - Torture, Psychiatric Abuse and the Health Professions*, Ed. Eric Stover and Elena D. Nightingale, M.D. W. H. Freeman and Company, New York, 1985

Amnesty International, *Annual Reports*

Amnesty International and Martin Robertson, *Torture in the Eighties*, Amnesty International Publications, 1984

Amnesty International, *Report on Torture*, Farrar, Strauss and Giroux, New York, 1975

Burgers, J. Herman; Danelius, Hans, *The United Nations Convention against Torture. A Handbook on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Martinus Nijhoff, Dordrecht, Netherlands, 1988. An account of travaux préparatoires and annotations on the provisions of the Convention.

Cassese, Antonio, *A New Approach to Human Rights: The European Convention for the Prevention of Torture*, in *The American Journal of International Law*, Vol. 83, No. 1, 1989, pages 128-153

Danaher, Michael, *Torture as a Tort in Violation of International Law: Filartiga v. Peña-Irala*, in *Stanford Law Review*, January 1981, pages 353-369

Danelius, Hans, *The United Nations Fund for Torture Victims: The First Years of Activity*, in *Human Rights Quarterly*, Vol. 8, No. 2, May 1986, pages 294-305

Donnelly, Jack, *The Emerging International Regime Against Torture*, *Netherlands International Law Review*, Vol. 33, 1986, pages 1-23

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Code criminel (torture)

ch. 13

b) soit pour tout autre motif fondé sur quelque forme de discrimination que ce soit.

La torture ne s'entend toutefois pas d'actes qui résultent uniquement de sanctions légitimes, qui sont inhérents à celles-ci ou occasionnées par elles.

(3) Ne constituent pas un moyen de défense contre une accusation fondée sur le présent article ni le fait que l'accusé a obéi aux ordres d'un supérieur ou d'une autorité publique en commettant les actes qui lui sont reprochés ni le fait que ces actes auraient été justifiés par des circonstances exceptionnelles, notamment un état de guerre, une menace de guerre, l'instabilité politique intérieure ou toute autre situation d'urgence.

(4) Dans toute procédure qui relève de la compétence du Parlement, une déclaration obtenue par la perpétration d'une infraction au présent article est inadmissible en preuve, sauf à titre de preuve de cette infraction.»

3. La présente loi entre en vigueur à la date fixée par proclamation.

but does not include any act or omission arising only from, inherent in or incidental to lawful sanctions.

(3) It is no defence to a charge under this section that the accused was ordered by a superior or a public authority to perform the act or omission that forms the subject-matter of the charge, nor that the act or omission is alleged to have been justified by exceptional circumstances, including a state of war, a threat of war, internal political instability or any other public emergency.

(4) In any proceedings over which Parliament has jurisdiction, any statement obtained as a result of the commission of an offence under this section is inadmissible in evidence except as evidence that the statement was so obtained."

3. This Act shall come into force on a day to be fixed by proclamation.

No defence

Evidence

Coming into force

Inadmissibilité de certains moyens de défense

Admissibilité en preuve

Entrée en vigueur

an aircraft in Canada under those regulations;

(c) the person who commits the act or omission is a Canadian citizen;

(d) the complainant is a Canadian citizen; or

(e) the person who commits the act or omission is, after the commission thereof, present in Canada."

2. The said Act is further amended by adding thereto, immediately after section 245.3 thereof, the following section:

"245.4 (1) Every official, or every person acting at the instigation of or with the consent or acquiescence of an official, who inflicts torture on any other person is guilty of an indictable offence and is liable to imprisonment for a term not exceeding fourteen years.

(2) For the purposes of this section,

Definitions
"official"
"fonctionnaire"

(a) a peace officer,

(b) a public officer,

(c) a member of the Canadian Forces, or

(d) any person who may exercise powers, pursuant to a law in force in a foreign state, that would in Canada be exercised by a person referred to in paragraph (a), (b), or (c),

whether the person exercises powers in Canada or outside Canada;

"torture" means any act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person

(a) for a purpose including

(i) obtaining from the person or from a third person information or a statement,

(ii) punishing the person for an act which that person or a third person has committed or is suspected of having committed, and

(iii) intimidating or coercing the person or a third person, or

(b) for any reason based on discrimination of any kind,

"torture"
"torture"

conditions d'inscription comme propriétaire d'un aéronef au Canada en vertu de ces règlements;

(c) l'auteur de l'acte a la citoyenneté canadienne;

(d) le plaignant a la citoyenneté canadienne;

(e) l'auteur de l'acte se trouve au Canada après la perpétration de celui-ci."

2. La même loi est modifiée par insertion, après l'article 245.3, de ce qui suit :

"245.4 (1) Est coupable d'un acte criminel et passible d'un emprisonnement maximal de quatorze ans le fonctionnaire qui — ou la personne qui, avec le consentement exprès ou tacite d'un fonctionnaire ou à sa demande — torture une autre personne.

(2) Les définitions qui suivent s'appliquent au présent article.

Definitions
"fonctionnaire"
"official"

(a) un agent de la paix;

(b) un fonctionnaire public;

(c) un membre des forces canadiennes;

(d) une personne que la loi d'un État étranger investit de pouvoirs qui, au Canada, seraient ceux d'une personne mentionnée à l'un des alinéas a), b) ou c).

"torture"
"torture"

"torture" Acte, commis par action ou omission, par lequel une douleur ou des souffrances aiguës, physiques ou mentales, sont intentionnellement infligées à une personne :

(a) soit afin notamment :

(i) d'obtenir d'elle ou d'une tierce personne des renseignements ou une déclaration,

(ii) de la punir d'un acte qu'elle ou une tierce personne a commis ou est soupçonnée d'avoir commis,

(iii) de l'intimider ou de faire pression sur elle ou d'intimider une tierce personne ou de faire pression sur celle-ci;

ANNEXE 7

35-36 ELIZABETH II

CHAPITRE 13

Loi modifiant le Code criminel (torture)

(torture)

An Act to amend the Criminal Code

CHAPTER 13

35-36 ELIZABETH II

[Assented to 14th April, 1987]

[Sanctionnée le 14 avril 1987]

Sa Majesté, sur l'avis et avec le consentement du Sénat et de la Chambre des communes du Canada, édicte :

1. L'article 6 du *Code criminel* est modifié par insertion, après le paragraphe (1.8), de ce qui suit :

«(1.9) Nonobstant la présente loi et toute autre loi, la personne qui, à l'extérieur du Canada, commet un acte par action ou omission qui, s'il était commis au Canada, constituerait une infraction, un complot, une tentative, un conseil ou une complicité après le fait à l'égard d'une infraction à l'article 245.4, est réputée avoir commis cet acte au Canada si, selon le cas :

a) l'acte est commis à bord d'un navire qui est immatriculé en conformité avec une loi du Parlement ou à l'égard duquel un permis ou un numéro d'identification a été délivré en conformité avec une telle loi;

b) l'acte est commis à bord d'un aéronef :

(i) soit immatriculé au Canada en vertu des règlements d'application de la *Loi sur l'aéronautique*,
(ii) soit loué sans équipage et mis en service par une personne remplissant, aux termes des règlements d'application de la *Loi sur l'aéronautique*, les

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

1. Section 6 of the *Criminal Code* is amended by adding thereto, immediately after subsection (1.8) thereof, the following subsection:

“(1.9) Notwithstanding anything in this Act or any other Act, every one who, outside Canada, commits an act or omission that, if committed in Canada, would constitute an offence against, a conspiracy or an attempt to commit an offence against, being an accessory after the fact in relation to an offence against, or any counselling in relation to an offence against, section 245.4 shall be deemed to commit that act or omission in Canada if

(a) the act or omission is committed on a ship that is registered or licensed, or for which an identification number has been issued, pursuant to any Act of Parliament;

(b) the act or omission is committed on an aircraft

(i) registered in Canada under regulations made under the *Aeronautics Act*, or
(ii) leased without crew and operated by a person who is qualified under regulations made under the *Aeronautics Act* to be registered as owner of

1977, 10 juin	Protocoles additionnels aux Conventions de Genève	Protocole I (Conflits armés internationaux)	Articles 10-11, 75
		Protocole II (Conflits armés non internationaux)	Articles 4-5, 7-8
D. Europe			
1950, 4 novembre	Convention européenne des droits de l'homme et des libertés fondamentales	Article 3	
1987, 26 juin	Convention européenne pour la prévention de la torture et des peines ou traitements inhumains ou dégradants	Tous les articles	
E. Les amériques			
1969, 22 novembre	Convention américaine des droits de l'homme	Article 5	
1985, 9 décembre	Convention interaméricaine pour prévenir et punir la torture	Tous les articles	
F. Afrique			
1981, juin	Charte africaine des droits de l'homme et des peuples	Articles 4-5	

**ANNEXE 6 : MISE HORS LA LOI DE LA TORTURE : UN APERÇU
DES MESURES ADOPTÉES AU CANADA ET À TRAVERS LE MONDE**

Date d'adoption	Titre	Principaux passages
A. Canada		
1960, 10 août	Déclaration canadienne des droits	Article 2b)
1982, 17 avril	Charte canadienne des droits et libertés	Article 12
1987, 1er juin	Code criminel du Canada (modification)(voir l'annexe 7)	Article 245-4
B. Nations Unies		
1948, 10 décembre	Déclaration universelle des droits de l'homme	Article 5
1957, 31 juillet	Ensemble de règles minima pour le traitement des détenus	Règles 31-33
1966, 16 décembre	Pacte international relatif aux droits civils et politiques	Articles 7, 10
1974, 14 décembre	Déclaration sur la protection des femmes et des enfants en période d'urgence et de conflit armé	Paragraphe 5
1975, 9 décembre	Déclaration sur la protection de toutes les personnes contre la torture et autres peines ou traitements cruels, inhumains ou dégradants	Tous les articles
1979, 17 décembre	Code de conduite pour les responsables de l'application des lois	Article 5
1982, 18 décembre	Principes d'éthique médicale applicables au rôle du personnel de santé, en particulier des médecins, dans la protection des prisonniers et des détenus contre la torture et autres peines ou traitements cruels, inhumains ou dégradants	Principes 2, 4
1984, 10 décembre	Convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants (voir l'annexe 2)	Tous les articles
C. Droit humanitaire		
1949, 12 août	Convention de Genève pour l'amélioration du sort des blessés et des malades dans les forces armées en campagne	Articles 3, 12
1949, 12 août	Convention de Genève pour l'amélioration du sort des blessés, des malades et des naufragés des forces armées sur mer	Articles 3, 12
1949, 12 août	Convention de Genève relative au traitement des prisonniers de guerre	Articles 3, 13, 17, 89, 99
1949, 12 août	Convention de Genève relative à la protection des personnes civiles en temps de guerre	Articles 3, 16, 27, 31-34, 37, 118-119

ANNEXE 5 : FONDS DE CONTRIBUTIONS VOLONTAIRES DES NATIONS UNIES POUR LES VICTIMES DE LA TORTURE

En décembre 1981, l'Assemblée générale des Nations Unies a créé le Fonds de contributions volontaires des Nations Unies pour les victimes de la torture dans le but de recevoir des contributions volontaires à répartir, par les mécanismes d'assistance existants sous forme d'aide humanitaire, judiciaire et financière aux personnes qui ont été torturées et aux membres de leur famille.

Ce fonds de contributions volontaires est géré par le Secrétaire général de l'Organisation des Nations Unies, avec l'assistance d'un Conseil d'administration dont les membres sont nommés par le Secrétaire général en consultation avec leurs gouvernements respectifs.

Le Conseil d'administration a pour tâche de promouvoir le Fonds et de solliciter des contributions de gouvernements, d'organisations, d'institutions privées et de particuliers. Le Canada a fourni des contributions au Fonds chaque année depuis 1983. Au 31 mars 1989, ses contributions totalisaient 160 000 \$.

Le Fonds de contributions volontaires reçoit les demandes de subventions soumises par des institutions, des organisations ou des groupes qui créent des projets visant expressément à aider les victimes de la torture. Des subventions sont octroyées pour des projets dans différents pays, avec priorité à ceux offrant une assistance médicale ou psychologique directe.

Le Fonds coopère en outre avec des centres pour le traitement et la réadaptation des victimes de la torture, dont le Canadian Centre for Victims of Torture établi à Toronto. Il a offert un support financier pour la formation de médecins et autre personnel médical aux méthodes de traitement des victimes de la torture et pour la fourniture d'une assistance dans d'autres parties du monde.

ANNEXE 4 : COMITÉ CONTRE LA TORTURE

Il est institué un Comité contre la torture (ci-après dénommé le Comité) qui a les fonctions définies ci-après. Le Comité est composé de dix experts de haute moralité et possédant une compétence reconnue dans le domaine des droits de l'homme, qui siègent à titre personnel. Les experts sont élus par les États parties, compte tenu d'une répartition géographique équitable et de l'intérêt que présente la participation aux travaux du Comité de quelques personnes ayant une expérience juridique. (Convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants - Article 17.1)

Au cours de la première réunion des États parties à la Convention contre la torture, tenue à Genève le 26 novembre 1987, les experts dont les noms suivent, ont été élus membres du Comité contre la torture :

NOM	PAYS	TERME EXPIRE
M. Alfredo R.A. BENGZON	Philippines	1991
M. Peter Thomas BURNS	Canada	1991
Mme Christine CHANET	France	1991
Mme Socorro DIAZ PALACIOS	Mexique	1991
M. Alexis DIPANDA MOUELLE	Cameroon	1989
M. Ricardo GIL LAVEDRA	Argentine	1991
M. Yuri A. KHITRIN	Union des Républiques socialistes soviétiques	1989
M. Dimitar Nikolov MIKHAILOV	Bulgarie	1989
M. Bent SØRENSEN	Danemark	1989
M. Joseph VOYAME	Suisse	1989

Le Comité contre la torture a tenu sa première session à l'Office des Nations Unies à Genève du 18 au 22 avril 1988. Les résultats des délibérations du Comité au cours de sa première session sont contenus dans les comptes rendus des séances tenues au cours de cette session (documents CAT/C/SR.1-SR.7) et dans son premier rapport (Documents officiels de l'Assemblée générale; quarante-troisième session, supplément N° 46) (A/43/46)).

Le Comité a tenu sa deuxième session à Genève du 17 au 28 avril 1989 et sa prochaine session est prévue pour la fin novembre 1989. Il examinera alors le rapport initial du Canada.

Le mandat du Comité contre la torture est défini à la Deuxième partie de la Convention, plus particulièrement aux articles 19 à 22 (voir l'annexe 2).

Etat	Date de la signature	Date de la réception de l'instrument de ratification ou d'adhésion
Nouvelle-Zélande	14 janvier 1986	3 novembre 1986 b/
Ouganda	22 février 1985	24 août 1987
Pays-Bas	4 février 1985	7 juillet 1988
Philippines	29 mai 1985	18 juin 1986 b/
Pologne	13 janvier 1986	9 septembre 1987
Portugal	4 février 1985	13 mars 1987
République démocratique allemande	7 avril 1986	24 février 1987
République dominicaine	4 février 1985	21 août 1986
République socialiste soviétique de Biélorussie	19 décembre 1985	8 janvier 1986
République socialiste soviétique d'Ukraine	27 février 1986	23 septembre 1988
Royaume-Uni de Grande-Bretagne et d'Irlande du Nord	15 mars 1985	18 novembre 1987
Sénégal	4 février 1985	7 juillet 1988
Sierra Leone	18 mars 1985	2 décembre 1986
Soudan	4 juin 1986	2 août 1988
Suède a/	4 février 1985	3 mars 1987
Suisse a/	4 février 1985	24 octobre 1986
Tchécoslovaquie	8 septembre 1986	
Togo a/	25 mars 1987	
Tunisie a/	26 août 1987	
Union des Républiques socialistes soviétiques	25 janvier 1988	
Uruguay a/	10 décembre 1985	
Venezuela	15 février 1985	

a/ Déclarations conformément aux articles 21 et 22 de la Convention.
b/ Adhésion

**ANNEXE 3 : Liste des Etats qui ont signé ou ratifié la Convention
contre la torture et autres peines ou traitements cruels,
inhumains ou dégradants ou y ont adhéré (au 10 novembre 1988)***

<u>Etat</u>	<u>Date de la signature</u>	<u>Date de la réception de l'instrument de ratification ou d'adhésion</u>
Afghanistan	4 février 1985	1 ^{er} avril 1987
Algérie	26 novembre 1985	
Allemagne, Rép. féd. d'	13 octobre 1986	
Argentine a/	4 février 1985	24 septembre 1986
Australie	10 décembre 1985	
Autriche a/	14 mars 1985	29 juillet 1987
Belgique	4 février 1985	
Belize		
Bolivie	4 février 1985	17 mars 1986 b/
Brésil	23 septembre 1985	
Bulgarie	10 juin 1986	16 décembre 1986
Cameroon		19 décembre 1986 b/
Canada	23 août 1985	24 juin 1987
Chili	23 septembre 1987	30 septembre 1988
Chine	12 décembre 1986	4 octobre 1988
Chypre	9 octobre 1985	
Colombie	10 avril 1985	8 décembre 1987
Costa Rica	4 février 1985	
Cuba	27 janvier 1986	
Danemark a/	4 février 1985	27 mai 1987
Egypte	4 février 1985	25 juin 1986 b/
Equateur a/	4 février 1985	30 mars 1988
Espagne a/	4 février 1985	21 octobre 1987
Etats-Unis d'Amérique	18 avril 1988	
Finlande	4 février 1985	
France a/	4 février 1985	18 février 1986
Gabon	21 janvier 1986	
Gambie	23 octobre 1985	6 octobre 1988
Grèce a/	4 février 1985	
Guinée	30 mai 1986	
Guyana	25 janvier 1988	19 mai 1988
Hongrie	28 novembre 1986	15 avril 1987
Indonésie	23 octobre 1985	
Islande	4 février 1985	
Israël	22 octobre 1986	
Italie	4 février 1985	
Liechtenstein	27 juin 1985	
Luxembourg a/	22 février 1985	29 septembre 1987
Maroc	8 janvier 1986	
Mexique	18 mars 1985	23 janvier 1986
Nicaragua	15 avril 1985	
Nigéria	28 juillet 1988	
Norvège a/	4 février 1985	9 juillet 1986

* Extraits du document des Nations Unies E/CN.4/1989/17 daté du 8 décembre 1988

Article 32

Le Secrétaire général de l'Organisation des Nations Unies notifiera à tous les Etats Membres de l'Organisation des Nations Unies et à tous les Etats qui auront signé la présente Convention ou y auront adhéré :

a) Les signatures, les ratifications et les adhésions reçues en application des articles 25 et 26;

b) La date d'entrée en vigueur de la Convention en application de l'article 27 et la date d'entrée en vigueur de tout amendement en application de l'article 29;

c) Les dénonciations reçues en application de l'article 31.

Article 33

1. La présente Convention, dont les textes anglais, arabe, chinois, espagnol, français et russe font également foi, sera déposée auprès du Secrétaire général de l'Organisation des Nations Unies.

2. Le Secrétaire général de l'Organisation des Nations Unies fera tenir une copie certifiée conforme de la présente Convention à tous les Etats.

1. Chaque Etat pourra, au moment où il signera ou ratifiera la présente Convention ou y adhèrera, déclarer qu'il ne reconnaît pas la compétence accordée au Comité aux termes de l'article 20.
2. Tout Etat partie qui aura formulé une réserve conformément aux dispositions du paragraphe 1 du présent article pourra à tout moment lever cette réserve par une notification adressée au Secrétaire général de l'Organisation des Nations Unies.

Article 28

1. Tout Etat partie à la présente Convention pourra proposer un amendement et déposer sa proposition auprès du Secrétaire général de l'Organisation des Nations Unies. Le Secrétaire général communiquera la proposition d'amendement aux Etats parties en leur demandant de lui faire savoir s'ils sont favorables à l'organisation d'une conférence d'Etats parties en vue de l'examen de la proposition et de sa mise aux voix. Si, dans les quatre mois qui suivent la date d'une telle communication, le tiers au moins des Etats parties se prononcent en faveur de la tenue de ladite conférence, le Secrétaire général organisera la conférence sous les auspices de l'Organisation des Nations Unies. Tout amendement adopté par la majorité des Etats parties présents et votants à la conférence sera soumis par le Secrétaire général à l'acceptation de tous les Etats parties.
2. Un amendement adopté selon les dispositions du paragraphe 1 du présent article entrera en vigueur lorsque les deux tiers des Etats parties à la présente Convention auront informé le Secrétaire général de l'Organisation des Nations Unies qu'ils l'ont accepté conformément à la procédure prévue par leurs constitutions respectives.
3. Lorsque les amendements entreront en vigueur, ils auront force obligatoire pour les Etats parties qui les auront acceptés, les autres Etats parties demeurant liés par les dispositions de la présente Convention et par tous amendements antérieurs qu'ils auront acceptés.

Article 30

1. Tout différend entre deux ou plus des Etats parties concernant l'interprétation ou l'application de la présente Convention qui ne peut pas être réglé par voie de négociation est soumis à l'arbitrage à la demande de l'un d'entre eux. Si, dans les six mois qui suivent la date de la demande d'arbitrage, les parties ne parviennent pas à se mettre d'accord sur l'organisation de l'arbitrage, l'une quelconque d'entre elles peut soumettre le différend à la Cour internationale de Justice en déposant une requête conformément au Statut de la Cour.
2. Chaque Etat pourra, au moment où il signera ou ratifiera la présente Convention ou y adhèrera, déclarer qu'il ne se considère pas lié par les dispositions du paragraphe 1 du présent article. Les autres Etats parties ne seront pas liés par lesdites dispositions envers tout Etat partie qui aura formulé une telle réserve.
3. Tout Etat partie qui aura formulé une réserve conformément aux dispositions du paragraphe 2 du présent article pourra à tout moment lever cette réserve par une notification adressée au Secrétaire général de l'Organisation des Nations Unies.

Article 31

1. Un Etat partie pourra dénoncer la présente Convention par notification écrite adressée au Secrétaire général de l'Organisation des Nations Unies. La dénonciation prend effet un an après la date à laquelle la notification aura été reçue par le Secrétaire général.
2. Une telle dénonciation ne libérera pas l'Etat partie des obligations qui lui incombent en vertu de la Convention en ce qui concerne tout acte ou toute omission commis avant la date à laquelle la dénonciation prendra effet; elle ne fera nullement obstacle à la poursuite de l'examen de toute question dont le Comité était déjà saisi à la date à laquelle la dénonciation a pris effet.
3. Après la date à laquelle la dénonciation par un Etat partie prend effet, le Comité n'entreprend l'examen d'aucune question nouvelle concernant cet Etat.

5. Le Comité n'examinera aucune communication d'un particulier conformément au présent article sans s'être assuré que :

a) La même question n'a pas été et n'est pas en cours d'examen devant une autre instance internationale d'enquête ou de règlement;

b) Le particulier a épuisé tous les recours internes disponibles; cette règle ne s'applique pas si les procédures de recours excèdent des délais raisonnables ou s'il est peu probable qu'elles donneraient satisfaction au particulier qui est la victime d'une violation de la présente Convention.

6. Le Comité tient ses séances à huis clos lorsqu'il examine les communications prévues dans le présent article.

7. Le Comité fait part de ses constatations à l'Etat partie intéressé et au particulier.

8. Les dispositions du présent article entreront en vigueur lorsque cinq Etats parties à la présente Convention auront fait la déclaration prévue au paragraphe 1 du présent article. Ladite déclaration est déposée par l'Etat partie auprès du Secrétaire général de l'Organisation des Nations Unies, qui en communique copie aux autres Etats parties. Une déclaration peut être retirée à tout moment au moyen d'une notification adressée au Secrétaire général. Ce retrait est sans préjudice de l'examen de toute question qui fait l'objet d'une communication déjà transmise en vertu du présent article; aucune autre communication soumise par ou pour le compte d'un particulier ne sera reçue en vertu du présent article après que le Secrétaire général aura reçu notification du retrait de la déclaration, à moins que l'Etat partie intéressé ait fait une nouvelle déclaration.

Article 23

Les membres du Comité et les membres des commissions de conciliation *ad hoc* qui pourraient être nommés conformément à l'alinéa e) du paragraphe 1 de l'article 21, ont droit aux facilités, privilèges et immunités reconnus aux experts en mission pour l'Organisation des Nations Unies, tels qu'ils sont énoncés dans les sections pertinentes de la Convention sur les privilèges et les immunités des Nations Unies.

Article 24

Le Comité présente aux Etats parties et à l'Assemblée générale de l'Organisation des Nations Unies un rapport annuel sur les activités qu'il aura entreprises en application de la présente Convention.

TROISIEME PARTIE

Article 25

1. La présente Convention est ouverte à la signature de tous les Etats.

2. La présente Convention est sujette à ratification. Les instruments de ratification seront déposés auprès du Secrétaire général de l'Organisation des Nations Unies.

Article 26

Tous les Etats peuvent adhérer à la présente Convention. L'adhésion se fera par le dépôt d'un instrument d'adhésion auprès du Secrétaire général de l'Organisation des Nations Unies.

Article 27

1. La présente Convention entrera en vigueur le vingtième jour après la date du dépôt auprès du Secrétaire général de l'Organisation des Nations Unies du vingtième instrument de ratification ou d'adhésion.

2. Pour tout Etat qui ratifiera la présente Convention ou y adhèrera après le dépôt du vingtième instrument de ratification ou d'adhésion, la Convention entrera en vigueur le vingtième jour après la date du dépôt par cet Etat de son instrument de ratification ou d'adhésion.

d) Le Comité tient ses séances à huis clos lorsqu'il examine les communications prévues au présent article;

e) Sous réserve des dispositions de l'alinéa c), le Comité met ses bons offices à la disposition des Etats parties intéressés, afin de parvenir à une solution amiable de la question, fondée sur le respect des obligations prévues par la présente Convention. À cette fin, le Comité peut, s'il l'estime opportun, établir une commission de conciliation *ad hoc*;

f) Dans toute affaire qui lui est soumise en vertu du présent article, le Comité peut demander aux Etats parties intéressés, visés à l'alinéa b), de lui fournir tout renseignement pertinent;

g) Les Etats parties intéressés, visés à l'alinéa b), ont le droit de se faire représenter lors de l'examen de l'affaire par le Comité et de présenter des observations oralement ou par écrit, ou sous l'une et l'autre forme;

h) Le Comité doit présenter un rapport dans un délai de douze mois à compter du jour où il a reçu la notification visée à l'alinéa b) :

i) Si une solution a pu être trouvée conformément aux dispositions de l'alinéa e), le Comité se borne dans son rapport à un bref exposé des faits et de la solution intervenue;

ii) Si une solution n'a pu être trouvée conformément aux dispositions de l'alinéa e), le Comité se borne, dans son rapport, à un bref exposé des faits; le texte des observations écrites et le procès-verbal des observations orales présentées par les Etats parties intéressés sont joints au rapport.

Pour chaque affaire, le rapport est communiqué aux Etats parties intéressés.

2. Les dispositions du présent article entreront en vigueur lorsque cinq Etats parties à la présente Convention auront fait la déclaration prévue au paragraphe 1 du présent article. Ladite déclaration est déposée par l'Etat partie auprès du Secrétaire général de l'Organisation des Nations Unies, qui en communique copie aux autres Etats parties. Une déclaration peut être retirée à tout moment au moyen d'une notification adressée au Secrétaire général. Ce retrait est sans préjudice de l'examen de toute question qui fait l'objet d'une communication déjà transmise en vertu du présent article; aucune autre communication d'un Etat partie ne sera reçue en vertu du présent article après que le Secrétaire général aura reçu notification du retrait de la déclaration, à moins que l'Etat partie intéressé ait fait une nouvelle déclaration.

Article 22

1. Tout Etat partie à la présente Convention peut, en vertu du présent article, déclarer à tout moment qu'il reconnaît la compétence du Comité pour recevoir et examiner des communications présentées par ou pour le compte de particuliers relevant de sa juridiction qui prétendent être victimes d'une violation, par un Etat partie, des dispositions de la Convention. Le Comité ne reçoit aucune communication intéressant un Etat partie qui n'a pas fait une telle déclaration.

2. Le Comité déclare irrecevable toute communication soumise en vertu du présent article qui est anonyme ou qu'il considère être un abus du droit de soumettre de telles communications, ou être incompatible avec les dispositions de la présente Convention.

3. Sous réserve des dispositions du paragraphe 2, le Comité porte toute communication qui lui est soumise en vertu du présent article à l'attention de l'Etat partie à la présente Convention qui a fait une déclaration en vertu du paragraphe 1 et a prétendument violé l'une quelconque des dispositions de la Convention. Dans les six mois qui suivent, ledit Etat soumet par écrit au Comité des explications ou déclarations éclaircissant la question et indiquant, le cas échéant, les mesures qu'il pourrait avoir prises pour remédier à la situation.

4. Le Comité examine les communications reçues en vertu du présent article en tenant compte de toutes les informations qui lui sont soumises par ou pour le compte du particulier et par l'Etat partie intéressé.

4. Le Comité peut, à sa discrétion, décider de reproduire dans le rapport annuel qu'il établit conformément à l'article 24 tous commentaires formés par lui en vertu du paragraphe 3 du présent article, accompagnés des observations reçues à ce sujet de l'Etat partie intéressé. Si l'Etat partie intéressé le demande, le Comité peut aussi reproduire le rapport présenté au titre du paragraphe 1 du présent article.

Article 20

1. Si le Comité reçoit des renseignements crédibles qui lui semblent contenir des indications, bien fondées que la torture est pratiquée systématiquement sur le territoire d'un Etat partie, il invite ledit Etat à coopérer dans l'examen des renseignements et, à cette fin, à lui faire part de ses observations à ce sujet.

2. En tenant compte de toutes observations éventuellement présentées par l'Etat partie intéressé et de tous autres renseignements pertinents dont il dispose, le Comité peut, s'il juge que cela se justifie, charger un ou plusieurs de ses membres de procéder à une enquête confidentielle et de lui faire rapport d'urgence.

3. Si une enquête est faite en vertu du paragraphe 2 du présent article, le Comité recherche la coopération de l'Etat partie intéressé. En accord avec cet Etat partie, l'enquête peut comporter une visite sur son territoire.

4. Après avoir examiné les conclusions du membre ou des membres qui lui sont soumises conformément au paragraphe 2 du présent article, le Comité transmet ces conclusions à l'Etat partie intéressé, avec tous commentaires ou suggestions qu'il juge appropriés compte tenu de la situation.

5. Tous les travaux du Comité dont il est fait mention aux paragraphes 1 à 4 du présent article sont confidentiels et, à toutes les étapes des travaux, on s'efforce d'obtenir la coopération de l'Etat partie. Une fois achevés ces travaux relatifs à une enquête menée en vertu du paragraphe 2, le Comité peut, après consultations avec l'Etat partie intéressé, décider de faire figurer un compte rendu succinct des résultats des travaux dans le rapport annuel qu'il établit conformément à l'article 24.

Article 21

1. Tout Etat partie à la présente Convention peut, en vertu du présent article, déclarer à tout moment qu'il reconnaît la compétence du Comité pour recevoir et examiner des communications dans lesquelles un Etat partie prétend qu'un autre Etat partie ne s'acquiesce pas de ses obligations au titre de la présente Convention. Ces communications ne peuvent être reçues et examinées conformément au présent article que si elles émanent d'un Etat partie qui a fait une déclaration reconnaissant, en ce qui le concerne, la compétence du Comité. Le Comité ne reçoit aucune communication intéressant un Etat partie qui n'a pas fait une telle déclaration. La procédure ci-après s'applique à l'égard des communications reçues en vertu du présent article :

a) Si un Etat partie à la présente Convention estime qu'un autre Etat partie également partie à la Convention n'en applique pas les dispositions, il peut appeler, par communication écrite, l'attention de cet Etat sur la question. Dans un délai de trois mois à compter de la date de réception de la communication, l'Etat destinataire fera tenir à l'Etat qui a adressé la communication des explications ou toutes autres déclarations écrites éliminant la question, qui devront comprendre, dans toute la mesure possible et utile, des indications sur ses règles de procédure et sur les moyens de recours, soit déjà utilisés, soit en instance, soit encore ouverts;

b) Si, dans un délai de six mois à compter de la date de réception de la communication originale par l'Etat destinataire, la question n'est pas réglée à la satisfaction des deux Etats parties intéressés, l'un comme l'autre auront le droit de la soumettre au Comité, en adressant une notification au Comité, ainsi qu'à l'autre Etat intéressé;

c) Le Comité ne peut connaître d'une affaire qui lui est soumise en vertu du présent article qu'après s'être assuré que tous les recours internes disponibles ont été utilisés et épuisés, conformément aux principes de droit international généralement reconnus. Cette règle ne s'applique pas dans les cas où les procédures de recours excèdent des délais raisonnables ni dans les cas où il est peu probable que les procédures de recours donneraient satisfaction à la personne qui est la victime de la violation de la présente Convention;

4. La première élection aura lieu au plus tard six mois après la date d'entrée en vigueur de la présente Convention. Quatre mois au moins avant la date de chaque élection, le Secrétaire général de l'Organisation des Nations Unies envoie une lettre aux Etats parties pour les inviter à présenter leurs candidatures dans un délai de trois mois. Le Secrétaire général dresse une liste par ordre alphabétique de tous les candidats ainsi désignés, avec indication des Etats parties qui les ont désignés, et la communique aux Etats parties.

5. Les membres du Comité sont élus pour quatre ans. Ils sont rééligibles s'ils sont présentés à nouveau. Toutefois, le mandat de cinq des membres élus lors de la première élection prendra fin au bout de deux ans; immédiatement après la première élection, le nom de ces cinq membres sera tiré au sort par le président de la réunion mentionnée au paragraphe 3 du présent article.

6. Si un membre du Comité décide, se démet de ses fonctions ou n'est plus en mesure pour quelque autre raison de s'acquitter de ses attributions au Comité, l'Etat partie qui l'a désigné nomme parmi ses ressortissants un autre expert qui siège au Comité pour la partie du mandat restant à court, sous réserve de l'approbation de la majorité des Etats parties. Cette approbation est considérée comme acquise à moins que la moitié des Etats parties ou davantage n'émettent une opinion défavorable dans un délai de six semaines à compter du moment où ils ont été informés par le Secrétaire général de l'Organisation des Nations Unies de la nomination proposée.

7. Les Etats parties prennent à leur charge les dépenses des membres du Comité pour la période où ceux-ci s'acquittent de fonctions au Comité.

Article 18

1. Le Comité élit son bureau pour une période de deux ans. Les membres du bureau sont rééligibles.

2. Le Comité établit lui-même son règlement intérieur; celui-ci doit, toutefois, contenir notamment les dispositions suivantes :

a) Le quorum est de six membres;

b) Les décisions du Comité sont prises à la majorité des membres présents.

3. Le Secrétaire général de l'Organisation des Nations Unies met à la disposition du Comité le personnel et les installations matérielles qui lui sont nécessaires pour s'acquitter efficacement des fonctions qui lui sont confiées en vertu de la présente Convention.

4. Le Secrétaire général de l'Organisation des Nations Unies convoque les membres du Comité pour la première réunion. Après sa première réunion, le Comité se réunit à toute occasion prévue par son règlement intérieur.

5. Les Etats parties prennent à leur charge les dépenses occasionnées par la tenue de réunions des Etats parties et du Comité, y compris le remboursement à l'Organisation des Nations Unies de tous frais, tels que dépenses de personnel et coût d'installations matérielles, que l'Organisation aura engagés conformément au paragraphe 3 du présent article.

Article 19

1. Les Etats parties présentent au Comité, par l'entremise du Secrétaire général de l'Organisation des Nations Unies, des rapports sur les mesures qu'ils ont prises pour donner effet à leurs engagements en vertu de la présente Convention, dans un délai d'un an à compter de l'entrée en vigueur de la Convention pour l'Etat partie intéressé. Les Etats parties présentent ensuite des rapports complémentaires tous les quatre ans sur toutes nouvelles mesures prises, et tous autres rapports demandés par le Comité.

2. Le Secrétaire général de l'Organisation des Nations Unies transmet les rapports à tous les Etats parties.

3. Chaque rapport est étudié par le Comité, qui peut faire les commentaires d'ordre général sur le rapport qu'il estime appropriés et qui transmet lesdits commentaires à l'Etat partie intéressé. Cet Etat partie peut communiquer en réponse au Comité toutes observations qu'il juge utiles.

Tout Etat partie assure à toute personne qui prétend avoir été soumise à la torture sur tout territoire sous sa juridiction le droit de porter plainte devant les autorités compétentes dudit Etat qui procéderont immédiatement et impartialement à l'examen de sa cause. Des mesures seront prises pour assurer la protection du plaignant et des témoins contre tout mauvais traitement ou toute intimidation en raison de la plainte déposée ou de toute déposition faite.

Article 13

1. Tout Etat partie garantit, dans son système juridique, à la victime d'une acte de torture, le droit d'obtenir réparation et d'être indemnisée équitablement et de manière adéquate, y compris les moyens nécessaires à sa réadaptation la plus complète possible. En cas de mort de la victime résultant d'un acte de torture, les ayants cause de celle-ci ont droit à indemnisation.

2. Le présent article n'exclut aucun droit à indemnisation qu'aurait la victime ou toute autre personne en vertu des lois nationales.

Article 15

Tout Etat partie veille à ce que toute déclaration dont il est établi qu'elle a été obtenue par la torture ne puisse être invoquée comme un élément de preuve dans une procédure, si ce n'est contre la personne accusée de torture pour établir qu'une déclaration a été faite.

Article 16

1. Tout Etat partie s'engage à interdire dans tout territoire sous sa juridiction d'autres actes constitutifs de peines ou traitements cruels, inhumains ou dégradants qui ne sont pas des actes de torture telle qu'elle est définie à l'article premier lorsque de tels actes sont commis par un agent de la fonction publique ou toute autre personne agissant à titre officiel, ou à son instigation ou avec son consentement exprès ou tacite. En particulier, les obligations énoncées aux articles 10, 11, 12 et 13 sont applicables moyennant le remplacement de la mention de la torture par la mention d'autres formes de peines ou traitements cruels, inhumains ou dégradants.

2. Les dispositions de la présente Convention sont sans préjudice des dispositions de tout autre instrument international ou de la loi nationale qui interdisent les peines ou traitements cruels, inhumains ou dégradants, ou qui ont trait à l'extradition ou à l'expulsion.

DEUXIÈME PARTIE

Article 17

1. Il est institué un Comité contre la torture (ci-après dénommé le Comité) qui a les fonctions définies ci-après. Le Comité est composé de dix experts de haute moralité et possédant une compétence reconnue dans le domaine des droits de l'homme, qui siègent à titre personnel. Les experts sont élus par les Etats parties, compte tenu d'une répartition géographique équitable et de l'intérêt que présente la participation aux travaux du Comité de quelques personnes ayant une expérience juridique.

2. Les membres du Comité sont élus au scrutin secret sur une liste de candidats désignés par les Etats parties. Chaque Etat partie peut désigner un candidat choisi parmi ses ressortissants. Les Etats parties tiennent compte de l'intérêt qu'il y a à désigner des candidats qui soient également membres du Comité des droits de l'homme institué en vertu du Pacte international relatif aux droits civils et politiques et qui soient disposés à siéger au Comité contre la torture.

3. Les membres du Comité sont élus au cours de réunions biennales des Etats parties convoquées par le Secrétaire général de l'Organisation des Nations Unies. À ces réunions, où le quorum est constitué par les deux tiers des Etats parties, sont élus membres du Comité les candidats qui obtiennent le plus grand nombre de voix et la majorité absolue des votes des représentants des Etats parties présents et votants.

2. Ces autorités prennent leur décision dans les mêmes conditions que pour toute infraction de droit commun de caractère grave en vertu du droit de cet Etat. Dans les cas visés au paragraphe 2 de l'article 5, les règles de preuve qui s'appliquent aux poursuites et à la condamnation ne sont en aucune façon moins rigoureuses que celles qui s'appliquent dans les cas visés au paragraphe 1 de l'article 5.

3. Toute personne poursuivie pour l'une quelconque des infractions visées à l'article 4 bénéficie de la garantie d'un traitement équitable à tous les stades de la procédure.

Article 8

1. Les infractions visées à l'article 4 sont de plein droit comprises dans tout traité d'extradition conclu entre Etats parties. Les Etats parties s'engagent à comprendre lesdites infractions dans tout traité d'extradition à conclure entre eux.

2. Si un Etat partie qui subordonne l'extradition à l'existence d'un traité est saisi d'une demande d'extradition par un autre Etat partie avec lequel il n'est pas lié par un traité d'extradition, il peut considérer la présente Convention comme constituant la base juridique de l'extradition en ce que concerne lesdites infractions. L'extradition est subordonnée aux autres conditions prévues par le droit de l'Etat requis.

3. Les Etats parties qui ne subordonnent pas l'extradition à l'existence d'un traité reconnaissent lesdites infractions comme cas d'extradition entre eux dans les conditions prévues par le droit de l'Etat requis.

4. Entre Etats parties lesdites infractions sont considérées aux fins d'extradition comme ayant été commises tant au lieu de leur perpétration que sur le territoire sous la juridiction des Etats tenus d'établir leur compétence en vertu du paragraphe 1 de l'article 5.

Article 9

1. Les Etats parties s'accordent l'entraide judiciaire la plus large possible dans toute procédure pénale relative aux infractions visées à l'article 4, y compris en ce qui concerne la communication de tous les éléments de preuve dont ils disposent et qui sont nécessaires aux fins de la procédure.

2. Les Etats parties s'acquittent de leurs obligations en vertu du paragraphe 1 du présent article en conformité avec tout traité d'entraide judiciaire qui peut exister entre eux.

Article 10

1. Tout Etat partie veille à ce que l'enseignement et l'information concernant l'interdiction de la torture fassent partie intégrante de la formation du personnel civil ou militaire chargé de l'application des lois, du personnel médical, des agents de la fonction publique et des autres personnes qui peuvent intervenir dans la garde, l'interrogatoire ou le traitement de tout individu arrêté, détenu ou emprisonné de quelque façon que ce soit.

2. Tout Etat partie incorpore l'interdiction aux règles ou instructions édictées en ce qui concerne les obligations et les attributions de telles personnes.

Article 11

Tout Etat partie exerce une surveillance systématique sur les règles, instructions, méthodes et pratiques d'interrogatoire et sur les dispositions concernant la garde et le traitement des personnes arrêtées, détenues ou emprisonnées de quelque façon que ce soit sur tout territoire sous sa juridiction, en vue d'éviter tout cas de torture.

Article 12

Tout Etat partie veille à ce que les autorités compétentes procèdent immédiatement à une enquête impartiale chaque fois qu'il y a des motifs raisonnables de croire qu'un acte de torture a été commis sur tout territoire sous sa juridiction.

2. Pour déterminer s'il y a de tels motifs, les autorités compétentes tiendront compte de toutes les considérations pertinentes, y compris, le cas échéant, de l'existence, dans l'Etat intéressé, d'un ensemble de violations systématiques des droits de l'homme, graves, flagrantes ou massives.

Article 4

1. Tout Etat partie veille à ce que tous les actes de torture constituent des infractions au regard de son droit pénal. Il en est de même de la tentative de pratiquer la torture ou de tout acte commis par n'importe quelle personne qui constitue une complicité ou une participation à l'acte de torture.

2. Tout Etat partie rend ces infractions passibles de peines appropriées qui prennent en considération leur gravité.

Article 5

1. Tout Etat partie prend les mesures nécessaires pour établir sa compétence aux fins de connaître des infractions visées à l'article 4 dans les cas suivants :

a) Quand l'infraction a été commise sur tout territoire sous la juridiction dudit Etat ou à bord d'aéronefs ou de navires immatriculés dans cet Etat;

b) Quand l'auteur présumé de l'infraction est un ressortissant dudit Etat;

c) Quand la victime est un ressortissant dudit Etat et que ce dernier le juge approprié.

2. Tout Etat partie prend également les mesures nécessaires pour établir sa compétence aux fins de connaître des infractions dans le cas où l'auteur présumé de celles-ci se trouve sur tout territoire sous sa juridiction et où ledit Etat ne l'extrade pas conformément à l'article 8 vers l'un des Etats visés au paragraphe 1 du présent article.

3. La présente Convention n'écarte aucune compétence pénale exercée conformément aux lois nationales.

Article 6

1. S'il estime que les circonstances le justifient, après avoir examiné les renseignements dont il dispose, tout Etat partie sur le territoire duquel se trouve une personne soupçonnée d'avoir commis une infraction visée à l'article 4, assure la détention de cette personne ou prend toutes autres mesures juridiques nécessaires pour assurer sa présence. Cette détention et ces mesures doivent être conformes à la législation dudit Etat; elles ne peuvent être maintenues que pendant le délai nécessaire à l'engagement de poursuites pénales ou d'une procédure d'extradition.

2. Ledit Etat procède immédiatement à une enquête préliminaire en vue d'établir les faits.

3. Toute personne détenue en application du paragraphe 1 du présent article peut communiquer immédiatement avec le plus proche représentant qualifié de l'Etat dont elle a la nationalité ou, s'il s'agit d'une personne apatride, avec le représentant de l'Etat où elle réside habituellement.

4. Lorsqu'un Etat a mis une personne en détention, conformément aux dispositions du présent article, il avise immédiatement de cette détention et des circonstances qui la justifient les Etats visés au paragraphe 1 de l'article 5. L'Etat qui procède à l'enquête préliminaire visée au paragraphe 2 du présent article en communiquera rapidement les conclusions auxdits Etats et leur indique s'il entend exercer sa compétence.

Article 7

1. L'Etat partie sur le territoire sous la juridiction duquel l'auteur présumé d'une infraction visée à l'article 4 est découvert, s'il n'extrade pas ce dernier, soumet l'affaire, dans les cas visés à l'article 5, à ses autorités compétentes pour l'exercice de l'action pénale.

ANNEXE 2 : CONVENTION CONTRE LA TORTURE ET AUTRES PEINES OU TRAITEMENTS CRUELS, INHUMAINS OU DÉGRADANTS

Les États parties à la présente Convention,

Considérant que, conformément aux principes proclamés dans la Charte des Nations Unies, la reconnaissance des droits égaux et inaliénables de tous les membres de la famille humaine est le fondement de la liberté, de la justice et de la paix dans le monde,

Reconnaissant que ces droits procèdent de la dignité inhérente à la personne humaine,

Considérant que les États sont tenus, en vertu de la Charte, en particulier de l'Article 55, d'encourager le respect universel et effectif des droits de l'homme et des libertés fondamentales,

Tenant compte de l'article 5 de la Déclaration universelle des droits de l'homme et de l'article 7 du Pacte international relatif aux droits civils et politiques qui prescrivent tous deux que nul ne sera soumis à la torture, ni à des peines ou traitements cruels, inhumains ou dégradants,

Tenant compte également de la Déclaration sur la protection de toutes les personnes contre la torture et autres peines ou traitements cruels, inhumains ou dégradants, adoptée par l'Assemblée générale le 9 décembre 1975,

Désireux d'accroître l'efficacité de la lutte contre la torture et les autres peines ou traitements cruels, inhumains ou dégradants dans le monde entier,

Sont convenus de ce qui suit :

PREMIÈRE PARTIE

Article premier

1. Aux fins de la présente Convention, le terme «torture» désigne tout acte par lequel une douleur ou des souffrances aiguës, physiques ou mentales, sont intentionnellement infligées à une personne aux fins notamment d'obtenir d'elle ou d'une tierce personne des renseignements ou des aveux, de la punir d'un acte qu'elle ou une tierce personne a commis ou est soupçonnée d'avoir commis, de l'humilier ou de faire pression sur elle ou d'humilier ou de faire pression sur une tierce personne, ou pour tout autre motif fondé sur une forme de discrimination quelle qu'elle soit, lorsqu'une telle douleur ou de telles souffrances sont infligées par un agent de la fonction publique ou toute autre personne agissant à titre officiel ou à son instigation ou avec son consentement exprès ou tacite. Ce terme ne s'étend pas à la douleur ou aux souffrances résultant uniquement de sanctions légitimes, inhérentes à ces sanctions ou occasionnées par elles.

2. Cet article est sans préjudice de tout instrument international ou de toute loi nationale qui contient ou peut contenir des dispositions de portée plus large.

Article 2

1. Tout État partie prend des mesures législatives, administratives, judiciaires et autres mesures efficaces pour empêcher que des actes de torture soient commis dans tout territoire sous sa juridiction.

2. Aucune circonstance exceptionnelle, quelle qu'elle soit, qu'il s'agisse de l'état de guerre ou de menace de guerre, d'insécurité politique intérieure ou de tout autre état d'exception, ne peut être invoquée pour justifier la torture.

3. L'ordre d'un supérieur ou d'une autorité publique ne peut être invoqué pour justifier la torture.

Article 3

1. Aucun État partie n'expulsera, ne refoulera, ni n'extradecera une personne vers un autre État où il y a des motifs sérieux de croire qu'elle risque d'être soumise à la torture.

8. *Proceedings Against the Crown Act*
9. *Child Welfare Act*

COLOMBIE-BRITANNIQUE

1. Ombudsman 1986 Annual Report extracts
2. Riverview Hospital - Policies and Procedures - Policy A-42: Patient Abuse
3. Beliefs, Goals and Strategies, B.C. Corrections Branch, Ministry of Attorney General
4. Correctional Centre Rules and Regulations 1986, Corrections Branch, Ministry of Attorney General

MANITOBA

The Corrections Act, C.C.S.M., C. C230

Loi sur l'indemnisation des victimes d'actes criminels, SRM 1987, c. C305

Loi sur les enquêtes médico-légales, SRM 1987, c. F52

Loi sur les enquêtes relatives à l'application de la loi, SRM 1987, c. L75

Loi sur la santé mentale, SRM 1987, c. M110

Loi sur l'ombudsman, SRM 1987, c. O45

Loi sur la Sûreté du Manitoba, SRM 1987, c. P150

NOUVELLE-ÉCOSSE

Government of Nova Scotia Policy Statement on the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

YUKON

Torture Prohibition Act

ANNEXE 1 : LISTE DES DOCUMENTS SOUMIS AVEC LE PRÉSENT RAPPORT

CANADA

- Appendice 1 *Charte canadienne des droits et libertés*
- Appendice 2 Décisions judiciaires mentionnées dans le rapport
- Appendice 3 *Loi modifiant le Code criminel (torture)*
- Appendice 4 *Déclaration canadienne des droits*
- Articles pertinents du *Code criminel*
- Appendice 5 Articles pertinents de la *Loi sur la Gendarmerie royale du Canada* et du Manuel des opérations de la Gendarmerie
- Appendice 6 Documents relatifs au Service correctionnel du Canada
- Appendice 7 Canada-Netherlands Treaty, Article XVII
- Appendice 8 Article 43 de la *Loi sur la preuve au Canada*
- Appendice 9 *Loi modifiant la Loi sur la Gendarmerie royale du Canada*

- Appendice 10 Les droits et responsabilités des détenus et détenues - Guide d'information à l'intention des personnes incarcérées dans un établissement fédéral
- Appendice 11 Propositions du gouvernement fédéral pour venir en aide aux victimes d'actes criminels

ALBERTA

1. *Corrections Act*
2. *The Correctional Institution Regulations* (Alberta Regulation #138/77)
3. *Fatality Inquiries Act*
4. *Public Inquiries Act*
5. *Ombudsman Act*
6. *Criminal Injuries Compensation Act*
7. *Fatal Accidents Act*

Les annexes au présent rapport, à l'exception de l'annexe I qui était attaché au rapport tel que soumis aux Nations Unies, ont été ajoutées pour fins de publication au Canada.

195. L'article 2 donne des précisions pour le calcul des dommages-intérêts à accorder aux victimes de la torture. Il dispose que, dans le cadre des poursuites intentées en vertu de l'article 1, le tribunal doit calculer les dommages-intérêts en fonction du principe applicable en cas de coups, de voies de fait, d'intimidation, de négligence ou de tout autre délit qui semble se rapprocher le plus de la torture infligée.

196. Des dommages-intérêts peuvent également être accordés à la victime d'actes criminels, à la personne ayant la charge de la victime ou aux personnes à charge de la victime, en vertu de la *Loi sur l'indemnisation des victimes d'actes criminels* (*Compensation for the Victims of Crime Act*), R.S.Y.T. 1986, c. 27, et aux membres de la famille d'une personne décédée, en vertu de la *Loi sur les accidents mortels* (*Fatal Accidents Act*), R.S.Y.T. 1986, c. 64, lorsque le décès est causé par un acte illégal, négligence ou défaut.

Article 15

197. L'article 4 de la *Loi sur l'interdiction de la torture* dispose que, dans toute instance sur laquelle l'Assemblée législative du Yukon a juridiction, toute déclaration obtenue par la torture est irrecevable comme élément de preuve, si ce n'est comme élément de preuve que la déclaration a été obtenue par la torture.

191. La Loi s'applique aux agents de la Couronne et à toute personne qui agit à leur instigation ou avec leur consentement. L'expression «agent de la Couronne» comprend les agents de la paix et tout membre de la Fonction publique du Yukon (a) qui est autorisé à prendre ou à faire exécuter toute mesure ou à exercer tout pouvoir, ou b) à qui est imposé toute obligation en vertu de n'importe quelle loi.

Article 1

192. La définition du terme «torture» dans la Loi sur l'interdiction de la torture ressemble beaucoup à celle que l'on trouve à l'article 1 de la Convention et se lit comme suit :

«torture» désigne tout acte ou toute omission par lesquels une douleur ou des souffrances aiguës, physiques ou mentales, sont intentionnellement infligées à une personne

a) aux fins notamment

i) d'obtenir d'elle ou d'une tierce personne des renseignements ou des déclarations

ii) de la punir d'un acte qu'elle ou une tierce personne a commis ou est soupçonnée avoir commis, ou

iii) de l'intimider ou de faire pression sur elle ou d'intimider et de faire pression sur une tierce personne, ou

b) pour tout autre motif fondé sur une forme de discrimination quelle qu'elle soit,

mais ne s'étend pas aux actes ou omissions résultant uniquement de sanctions légitimes, inhérentes à ces sanctions ou occasionnées par elles.

Article 2

193. Le paragraphe 3(1) de la Loi sur l'interdiction de la torture dispose que, dans toute poursuite intentée en vertu de l'article 1 de la Loi, ne constitue pas une défense valable le fait que le défendeur s'est vu ordonner par un supérieur ou une autorité publique de se livrer à l'acte ou à l'omission qui fait l'objet de la poursuite, ni le fait que l'acte ou l'omission aurait été justifié par des circonstances exceptionnelles telles que l'état de guerre, la menace de guerre, l'instabilité politique intérieure ou tout autre état d'exception.

Article 14

194. L'article 1 de la Loi sur l'interdiction de la torture délimite les responsabilités à l'égard des actes de torture en disposant que tout agent de la Couronne ou toute personne agissant à son instigation ou avec son consentement qui fait subir des tortures à une autre commet un délit et est redevable, et rend son employeur redevable, de dommages-intérêts à la victime.

C. MESURES ADOPTÉES PAR LES GOUVERNEMENTS DES TERRITOIRES

CHAPITRE 1 : TERRITOIRES DU NORD-OUEST

Article 2

184. Une révision de la législation des Territoires du Nord-Ouest a eu lieu en 1987. On n'a identifié aucune disposition qui permettrait la torture, et en conséquence, aucune modification n'était nécessaire pour rendre notre législation conforme à l'article 2 de la Convention.

185. Dans les lois ou politiques des Territoires du Nord-Ouest, rien ne peut être invoqué pour justifier la torture.

186. Aucun agent ou organisme des Territoires du Nord-Ouest n'a droit ou n'est autorisé à ordonner la torture ou à justifier son usage.

Article 14

187. Un amendement a été apporté à la *Loi sur l'indemnisation des victimes d'actes criminels* des Territoires du Nord-Ouest afin d'inclure la nouvelle disposition du *Code criminel* en matière de torture dans la liste des infractions pour lesquelles les victimes, les personnes à charge des victimes et les personnes ayant la charge des victimes, peuvent être indemnisées. Une victime de torture, ou ses dépendants, peut entamer une poursuite au civil contre l'auteur de la torture.

CHAPITRE 2 : YUKON

Introduction

188. Le gouvernement du Yukon a adopté une loi contre la torture intitulée *Loi sur l'interdiction de la torture* (*Torture Prohibition Act*), qui est entrée en vigueur le 8 janvier 1988. Cette loi se veut un moyen de mettre en oeuvre la Convention dans la sphère de compétence du Yukon. Le préambule de la Loi dispose :

Reconnaissant que le Canada est partie à la Convention des Nations Unies contre la torture et autres peines ou traitements cruels, inhumains ou dégradants, Le Commissaire du Yukon, de l'avis et du consentement de l'Assemblée législative, décrète ce qui suit.

189. Les dispositions de la Loi suivent de près le libellé des dispositions correspondantes de la Convention.

190. La *Loi sur l'interdiction de la torture* traite principalement de l'aspect civil des actes de torture (l'aspect criminel étant couvert par le *Code criminel* du Canada, comme on l'explique dans la partie réservée au gouvernement fédéral), rendant leur auteur redevable de dommages-intérêts à la victime. Les dispositions de la Loi s'appliquent principalement aux articles 1, 2, 14 et 15 de la Convention.

accusation d'abus a été portée, la police peut être incluse dans l'enquête selon le souhait du client et la preuve disponible durant l'examen ministériel.

Article 13

178. La *Loi sur la Gendarmerie royale du Canada* et la *Loi sur la police* exposent les procédures à suivre dans le cas de l'enquête sur des plaintes portées par le public contre la police.

179. Les détenus des centres correctionnels pour adultes de la province ont accès à une procédure de grief interne. Ils peuvent également rechercher réparation en s'adressant au système juridique ou au Bureau de l'Ombudsman.

Article 14

180. En Saskatchewan, une victime de torture pourrait entamer une poursuite au civil pour réclamer dédommagement de la part du tortionnaire. Si la victime décide, une demande de dédommagement peut être déposée en vertu de la *Loi sur les accidents mortels (The Fatal Accidents Act)*, R.S.S. 1978, c. F-11, en faveur de l'époux, de l'épouse, des parents et des enfants de la victime. les termes «parents» et «enfants» sont définis de façon très large.

Article 16

181. L'usage de la force physique contre les jeunes délinquants n'est pas permis, sauf en cas de nécessité pour maîtriser une jeune personne qui risque de se blesser elle-même ou de blesser une autre personne, pour prévenir des dommages aux biens, ou pour maintenir la sécurité et l'ordre. La force physique ne peut servir de châtiment. La contrainte physique n'est permise que pour des raisons de sécurité ou de sûreté et on ne doit pas y recourir lorsqu'il existe d'autres possibilités. Lorsqu'on a recours à la force physique, seules les mesures autorisées sont permises, le degré de force devant s'appliquer au minimum, et la force doit cesser de s'appliquer à la première occasion.

182. Selon la législation, les règlements et les politiques du ministère de la Santé, les patients volontaires des établissements de soins de santé ne peuvent être soumis qu'au traitement auquel ils consentent. Les patients involontaires au traitement peuvent être traités sans consentement à trois conditions : 1) le médecin doit expliquer le traitement et considérer les points de vue du patient; 2) la thérapie par électrochoc exige un examen par deux psychiatres et leur approbation par voie d'attestation; et 3) la psychochirurgie et le traitement expérimental sont interdits. Lorsque la thérapie par électrochoc est nécessaire, avant le début du traitement, le représentant officiel en est informé et on peut en appeler de la décision auprès du Bureau d'examen (Review Panel). Les patients sont informés de leurs droits au moyen d'une brochure.

183. Dans le cas des personnes retardées mentalement, la politique des Services sociaux interdit un traitement qui pourrait être qualifié de cruel ou d'inhabituel. Des lignes directrices spécifiques concernant un traitement acceptable et approprié sont exposées dans la politique ministérielle.

incidences des dispositions de la *Charte canadienne des droits et libertés*. Cette formation est conforme à l'esprit de la Convention.

170. Dans le cas des centres correctionnels pour adultes, un objectif important est d'assurer et de maintenir une détention sûre et humaine, de contrôler et de prendre soin des personnes condamnées ou renvoyées par les tribunaux. Par conséquent, une directive de la direction sur l'usage de la force indique que tous les membres du personnel doivent être formés à l'usage de la force comme moyen de maîtriser les détenus. La formation est conforme à l'intention de l'article 10. Par exemple, le manuel indique clairement que la contrainte physique ne peut pas être utilisée comme forme de châtiment, de sanction disciplinaire ou de traitement dans le cas d'un désordre mental.

171. Dans le contexte des jeunes délinquants, le personnel reçoit une formation de base sur les droits de la personne reliée au *Code des droits de la personne de la Saskatchewan (The Saskatchewan Human Rights Code)*, R.S.S. 1978, c. S-24.1, à la *Charte canadienne des droits et libertés*. Les limitations sur l'usage de la force et de la contrainte physique s'appliquant aux jeunes délinquants gardés en détention sont exposées dans une politique ministérielle et renforcées lors de la séance de formation que doit suivre tout nouveau membre du personnel.

172. Dans le système des soins de santé de la province, les membres du personnel reçoivent une formation sur leurs obligations et les patients sont informés de leurs droits. Les membres du personnel de toutes les disciplines professionnelles affectés aux établissements de santé mentale reçoivent une formation sur les normes et l'éthique professionnelle à appliquer lors du traitement des patients.

173. Concernant les personnes retardées mentalement, le personnel reçoit une formation sur des politiques et des procédures du ministère des Services sociaux quand au traitement approprié des patients.

Article 11

174. Pour ce qui est des jeunes délinquants, la politique ministérielle interdit spécifiquement les voies de fait par les membres du personnel.

175. Quant aux agents de police, la *Loi sur la Gendarmerie royale du Canada*, S.R.C. 1970, c. R-9, et la *Loi sur la police (The Police Act)*, R.S.S. 1978, c. P-15, indiquent les infractions spécifiques constituant des abus touchant les prisonniers ou d'autres personnes.

Article 12

176. La *Loi sur la Gendarmerie royale du Canada* et la *Loi sur la police* exigent que toute plainte sur la brutalité policière fasse l'objet d'une enquête approfondie.

177. La politique du ministère des Services sociaux à l'égard des jeunes délinquants mentionne les procédures à suivre durant une enquête sur des voies de fait apparentes ou présumées. La « Directive concernant les incidents supposant la possibilité de voies de fait sur un résident par un membre du personnel » souligne le rôle du directeur de l'établissement dans la conduite d'une enquête sur des voies de fait alléguées. Lorsqu'une

160. Enfin, l'enseignement et l'information dispensés aux employés visent le respect des droits des personnes et à permettre la réinsertion sociale des personnes incarcérées.

Sur le plan policier

161. Les directives et les communiqués émis aux policiers reflètent bien les principes énoncés dans la Convention.

162. La formation des policiers relève de l'État, qui préconise les valeurs fondamentales d'une société libre et démocratique dans le respect des droits et libertés de chaque individu.

163. Les policiers du Québec sont soumis à un Code de déontologie qui favorise le maintien de la discipline et de l'éthique, le respect des droits de la personne et condamne les gestes répréhensibles.

164. Un organisme gouvernemental à caractère quasi-judiciaire, la Commission de police du Québec, peut intervenir et enquêter sur les cas d'abus policiers qui lui sont présentés. Cet organisme formule également des recommandations à l'intention des corps policiers québécois.

165. De plus, chaque citoyen du Québec a librement accès aux tribunaux, tant criminels que civils, pour faire valoir ses droits à l'encontre de tout geste qu'il croit abusif de la part d'un policier.

CHAPITRE 10 : SASKATCHEWAN

166. Ce rapport souligne la législation, les règlements, les politiques et les programmes en existence le 29 février 1988 et qui sont pertinents à la mise en application de la Convention en Saskatchewan.

Article 6(3)

167. Les établissements correctionnels pour adultes de la Saskatchewan ont pour politique de faciliter les visites, les appels téléphoniques et les communications écrites par et pour les détenus. Cette politique s'étend aux contacts avec les autorités de l'immigration, avec les ambassadeurs, etc.

Article 10

168. Les personnes exerçant des fonctions relatives à la garde, à l'interrogatoire ou au traitement d'individus arrêtés, en détention ou en prison, reçoivent des renseignements d'ordre général concernant les obligations et la responsabilité qui peuvent résulter de leur traitement des personnes dont elles ont la charge.

169. De plus, pour ce qui est des agents de police, les cours de droit criminel de l'Académie de la Gendarmerie royale du Canada et du Collège de police de la Saskatchewan comprennent plusieurs heures de formation sur l'arrestation et la détention, et sur les

exercice permettent de croire que la législation québécoise ne contrevient pas aux dispositions de la Convention contre la torture.

156. En matière pénale, le Québec a modifié son *Code de procédures pénales* (art. 61) en vue d'incorporer «les règles de preuve en matière criminelle dont la Loi sur la preuve au Canada». En matière civile, le gouvernement du Québec prévoit également saisir l'Assemblée nationale d'un projet d'amendement au *Code civil du Québec* sur l'admissibilité de la preuve. Celui-ci aurait pour objet le rejet de toute preuve obtenue en contravention des droits et libertés fondamentaux.

Sur le plan correctionnel

157. Le gouvernement du Québec a adopté des procédures garantissant le respect de la dignité humaine et régissant l'action des agents en matière correctionnelle :

- instructions régissant l'interrogation d'une personne incarcérée (février 1985);
- instructions régissant l'admission des ressortissants étrangers dans les établissements de détention provinciaux (septembre 1986);
- instructions régissant la réception d'une personne incarcérée dans un établissement de détention (janvier 1987);
- instructions régissant l'admission d'une personne incarcérée dans un établissement de détention (janvier 1987);
- instructions régissant le manquement à la discipline de la part d'une personne incarcérée (janvier 1987).

158. Le Québec a par ailleurs mis en place diverses politiques pour le guider dans son action :

- Politique du plan de séjour (mars 1984);
- Politique d'accueil des personnes incarcérées (novembre 1986);
- Politique en matière d'absence temporaire (novembre 1986);
- Politique des services de pastorale en milieu carcéral (novembre 1986);
- Politique de plan de séjour pour les personnes prévenues (février 1987).

159. Par ailleurs, les personnes incarcérées peuvent s'en référer au Protecteur du citoyen et à la Commission des droits de la personne dont les membres et les enquêteurs peuvent rendre visite aux établissements de détention en tout temps. La correspondance ainsi que les rencontres avec des personnes incarcérées font alors exception à l'examen habituel. Ainsi, toute plainte dénonçant la torture ou un traitement cruel, inhumain ou dégradant pourrait être immédiatement traitée et des mesures de correction pourraient être apportées promptement.

d'autres circonstances louches ou subites. (La Loi sur l'état civil exige la tenue d'une enquête avant la délivrance d'un permis d'ensevelissement.)

149. La Loi sur les coroners exige également que quiconque a des raisons de croire qu'une personne est décédée dans l'une ou l'autre des circonstances précitées avise immédiatement le coroner. Elle exige en outre que le surintendant ou le gardien de prison avise immédiatement le coroner dans tous les cas où un prisonnier décède dans une prison, une maison de correction ou un lieu de détention.

Article 14

150. L'Île-du-Prince-Édouard a récemment adopté la Loi sur les victimes d'actes criminels (*Victims of Crime Act*) (1988), laquelle prévoit le versement d'une indemnité publique aux personnes qui ont subi des préjudices, y compris des blessures corporelles ou psychiques, des souffrances morales ou des pertes économiques du fait d'actes contraires aux lois pénales, ce qui comprend, bien sûr, les victimes d'actes de torture aux termes de l'article 245.4 du Code criminel.

Article 16

151. Les dispositions du règlement affèrent à la Loi sur les prisons (dont il a été question à l'article 2) semblent répondre aux objectifs de l'article 16.

CHAPITRE 9 : QUÉBEC

152. Le Québec s'est engagé à respecter les dispositions de la Convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants en adoptant le 10 juin 1987 le décret N° 912-87, conformément à son droit interne.

Mesures législatives, administratives et judiciaires donnant effet aux articles 2, 6, 7 et 10 à 16 de la Convention

153. Le gouvernement du Québec sanctionnait, en juin 1975, la Charte des droits et libertés de la personne qui décrète notamment que « tout être humain a droit à la vie, ainsi qu'à la sûreté, à l'intégrité et à la liberté de sa personne ». La Charte stipule également que « toute personne arrêtée ou détenue doit être traitée avec humanité et avec le respect dû à la personne humaine... [cette personne] a droit, sans délai, d'en prévenir ses proches et de recourir à l'assistance d'un avocat. Elle doit être promptement informée de ces droits ».

154. L'observation des dispositions de cette Charte rend virtuellement inexistants les cas d'atteinte à l'intégrité des citoyens visés à la Convention. Toutefois, pour en garantir le respect, des mesures administratives et des mécanismes particuliers ont été mis en place.

Sur le plan législatif

155. Le gouvernement du Québec a procédé à la vérification de l'ensemble de la législation québécoise pour s'assurer qu'elle ne contient aucune disposition susceptible d'être jugée non conforme aux droits fondamentaux inscrits dans la Convention. Les résultats de cet

a) Adoption et mise en application de la *Loi sur les services à la famille et à l'enfance (Family and Child Services Act)*, R.S.P.E.I. 1974, c. F-2.01, laquelle permet d'appréhender les enfants qui, notamment, ont fait l'objet de mauvais traitements d'ordre physique ou sexuel, ont été négligés ou risquent d'être sans cesse exposés à des comportements menaçants, et oblige toute personne qui sait ou a des motifs raisonnables ou probables de croire qu'un enfant a été maltraité à signaler le cas à l'autorité compétente.

b) Adoption récente de la *Loi sur la protection des adultes (Adult Protection Act)* (1988), laquelle prévoit l'aide ou l'intervention du gouvernement afin de protéger tout adulte incapable de se protéger lui-même contre la négligence ou les mauvais traitements (cette dernière expression englobant les mauvais traitements à caractère offensif, qu'ils soient d'ordre physique, sexuel, mental ou émotif, qui causent ou sont raisonnablement susceptibles de causer à la victime des préjudices notamment psychologiquement). La Loi prévoit la déclaration des cas de personnes ayant besoin d'aide ou de protection et autorise les tribunaux à rendre des ordonnances d'intervention protectrice.

c) Adoption et mise en application du règlement afférent à la *Loi sur les prisons (Jails Act)*, R.S.P.E.I. 1974, c. J-1, lequel prévoit le traitement humain des prisonniers et interdit aux agents de correction d'utiliser de quelque forme de violence que ce soit à l'égard des prisonniers, sauf en cas de nécessité absolue pour se défendre personnellement ou pour défendre un autre prisonnier ou un employé de la prison, ou encore lorsqu'il le faut pour maîtriser un prisonnier rebelle ou agité. En pareil cas, les agents ne doivent user que du minimum de force nécessaire et rendre immédiatement compte de l'incident, par écrit, au surintendant de l'établissement. Ce règlement limite en outre les sanctions que l'on peut imposer aux prisonniers qui violent les règles de conduite. Ces sanctions se limitent au retrait de privilèges, à l'isolement cellulaire pour une période maximale de quatre jours sans l'autorisation du directeur et à la confiscation de la remise de peine prévue par la loi.

Article 7

145. La province se conforme à cet article en mettant en application l'article du *Code criminel* fédéral qui interdit la torture (article 245.4) et celui de la Charte des droits qui interdit les traitements ou peines cruels et inusités (article 12).

Article 11

146. Le règlement afférent à la *Loi sur les prisons*, dont il est fait état à l'article 2, permet d'atteindre l'objectif de l'article 7 qui consiste à éviter tout cas de torture à l'endroit des personnes arrêtées, détenues ou emprisonnées.

Article 12

147. Les actes présumés de torture sont sujets à une enquête policière en application des dispositions du *Code criminel*.

148. De plus, deux lois provinciales, la *Loi sur les coroners (Coroners Act)*, S.P.E.I. 1957, c. 10, et la *Loi sur l'état civil (Vital Statistics Act)*, R.S.P.E.I. 1974, c. V-6, exigent la tenue d'enquêtes spéciales dans les cas où le décès d'une personne semble attribuable à la «violen-

Article 16

137. En vertu de la *Loi sur la santé mentale* de l'Ontario, tout malade a le droit absolu de refuser tout traitement psychiatrique, sauf s'il y a déclaration d'incapacité à consentir au traitement. Le malade qui est jugé inhabile à prendre une décision quant au traitement peut être portée en appel devant les tribunaux. Tout malade qui est âgé de plus de 16 ans et est habile à le faire a le droit de désigner quelqu'un pour prendre en son nom des décisions quant au traitement. Le malade en cure obligatoire, ou la personne autorisée à prendre une décision en son nom si le malade est jugé inhabile, ne peut pas consentir à la psychochirurgie. Le malade compétent ou son représentant peut absolument refuser le recours aux électrochocs.

138. Deux dispositions particulières de la *Loi sur les services à l'enfance et à la famille* servent à empêcher l'État d'abuser de son pouvoir durant les audiences relatives à la protection de l'enfant : la représentation de l'enfant par un avocat à tous les stades de l'audience (article 38) et la présence des médias aux audiences (article 41).

139. L'article 96 de la *Loi sur les services à l'enfance et à la famille* interdit de placer des enfants dans un lieu de détention provisoire, sauf dans des circonstances très limitées qui sont régies soit par une ordonnance d'un tribunal (jeunes contrevenants ou traitement en milieu fermé), soit par un processus administratif soigneusement réglementé.

140. L'article 97 de la Loi interdit le châtiment corporel à l'égard de tout enfant qui reçoit des services aux termes de la Loi et s'applique non seulement aux services fournis par le ministère des Services sociaux et communautaires, mais également à ceux que dispense tout organisme financé ou agréé par le ministère.

141. La partie VI de la Loi réglemente et limite soigneusement le recours à des techniques de traitement importune et à des psychotropes comme moyens de traitement. La partie IX traite des programmes de soins en établissement pour enfants et interdit le recours à des mesures délibérément dures et dégradantes qui humilient le pensionnaire ainsi qu'à des mesures qui le privent de l'essentiel, dont le gîte, le couvert, le vêtement et les couvertures de lit.

CHAPITRE 8 : ÎLE-DU-PRINCE-ÉDOUARD

142. Les lois, politiques et programmes de l'Île-du-Prince-Édouard semblent conformes aux dispositions de la Convention.

143. Le présent rapport portera sur les articles de la Convention consacrés à des questions qui, de par la Constitution, relèvent de la compétence des provinces et qui sont visées directement ou indirectement par une loi de la province de l'Île-du-Prince-Édouard.

Article 2(1)

144. Voici quelques-unes des mesures prises pour empêcher que des actes de torture ne soient commis sur le territoire de la province :

(iv) demander un entretien avec un juge de paix afin de déterminer si les circonstances justifient le dépôt d'une plainte en vertu du *Code criminel*.

129. En 1981, le gouvernement provincial a adopté une loi permettant aux citoyens qui ont des plaintes à formuler contre les agents employés par la Municipalité de la communauté urbaine de Toronto de les déposer auprès d'un organisme civil.

130. Sous ce régime, c'est généralement la police qui fait enquête sur les plaintes sous la surveillance de l'organisme civil, qui en fait ensuite l'examen. L'objet des plaintes peut aller de questions mineures à des allégations graves telles que des voies de fait. Aux termes de l'enquête, l'agent concerné peut avoir à faire face à une audience publique devant un comité composé de civils qui a le pouvoir de le ou la congédier du corps de police.

131. Les membres du public qui ont des plaintes à formuler contre des agents à l'extérieur de la communauté urbaine de Toronto peuvent en saisir le corps de police local et la Commission de police de l'Ontario. Un projet de loi a été déposé qui, s'il était adopté, permettrait d'étendre à d'autres secteurs de la province la procédure de traitement des plaintes déjà prévue pour la communauté urbaine de Toronto.

132. Tout programme de placement d'enfants en établissement doit prévoir une procédure de traitement des plaintes. Les plaignants non satisfaits peuvent être renvoyés au ministre des Services sociaux et communautaires. Un Bureau d'assistance à l'enfance et à la famille a été mis sur pied afin de coordonner et d'appliquer un système d'assistance aux enfants et à leur famille qui reçoivent des services aux termes de la *Loi sur les services à l'enfance et à la famille*.

133. Toute société d'aide à l'enfance doit prévoir une procédure bien claire de révision des plaintes relatives aux services qu'elle offre. Les plaignants non satisfaits peuvent être renvoyés à un directeur du ministère des Services sociaux et communautaires.

Article 14

134. Toute victime d'un acte criminel avec violence aux termes du *Code criminel*, toute personne chargée de subvenir aux besoins de la victime, ou toute personne à charge de la victime dans les cas où la violence a entraîné le décès de celle-ci, peut demander une indemnisation auprès de la Commission d'indemnisation des victimes d'actes criminels.

135. L'indemnisation qui peut être accordée comprend les dépenses subies par suite de la blessure ou du décès, les pertes pécuniaires et un dédommagement pour les douleurs et souffrances. Le fait d'avoir présenté une demande d'indemnisation à la Commission n'empêche pas une personne de réclamer des dommages-intérêts par voie d'instance civile.

Article 15

136. La règle de preuve selon la *common law* s'applique, de sorte que les aveux obtenus par la torture sont irrecevables.

employés pour prévenir la torture et les autres formes d'abus. Par exemple, des caméras sont généralement installées dans les cellules de détention et permettent d'exercer une surveillance régulière. Les personnes détenues ont droit à des conseils juridiques et celles qui ne peuvent se permettre de retenir les services de leur propre avocat peuvent obtenir assistance par l'entremise de l'Aide juridique. De plus, la *Loi sur l'inspection des établissements publics*, qui est appliquée par le ministère du Procureur général, prévoit l'inspection des lieux de détention provisoire par un groupe d'inspecteurs indépendants qui signalent ensuite si des personnes sont détenues dans des conditions repérables ou pour un laps de temps déraisonnable. Toutes ces mesures viennent s'ajouter à la surveillance judiciaire de la détention, qui est prévue par le *Code criminel*.

124. Au niveau de la formation de base, de la formation avancée et de la formation en matière d'enquêtes criminelles, le personnel chargé de l'application de la loi reçoit aussi un enseignement sur les questions relatives à la preuve, y compris le mode d'interrogatoire recommandé et la loi qui exige que les dépositions soient faites volontairement sans quoi elles ne seront pas recevables devant les tribunaux.

125. Le ministère des Services sociaux et communautaires prévoit des établissements de garde et de détention prédictionnels à l'intention des jeunes qui sont arrêtés et détenus en vertu de la *Loi sur les jeunes contrevenants*. Ces programmes résidentiels sont soumis à une procédure de délivrance de permis et font l'objet d'une étroite surveillance de la part du ministère.

126. La Commission de révision des placements sous garde examine les demandes des jeunes personnes placées en établissement de garde ou de détention qui souhaitent une révision dans les cas suivants : la décision de détention d'une jeune personne dans un centre de détention à sécurité maximale ou de l'y transférer; le lieu particulier où cette jeune personne est détenue ou auquel elle a été transférée; le refus d'autoriser la mise en liberté provisoire de cette jeune personne; ou le transfert de cette personne d'un lieu de garde en milieu ouvert à un lieu de garde en milieu fermé.

Article 12

127. Tout employé du ministère des Services correctionnels qui a recours à la force doit faire rapport sur l'incident par écrit. Tous les rapports ainsi présentés sont examinés par des hauts fonctionnaires du ministère. Lorsqu'on use de force à l'égard d'un détenu, celui-ci doit subir promptement un examen médical et recevoir tout traitement nécessaire.

Article 13

128. Tout détenu d'un établissement correctionnel qui estime avoir fait l'objet d'un usage injustifié de la force peut prendre l'une ou l'autre des mesures suivantes :

- (i) déposer une plainte auprès du surintendant de l'établissement;
- (ii) demander un entretien avec un représentant du corps de police local afin de déterminer s'il y aurait lieu d'intenter des poursuites au criminel;
- (iii) déposer une plainte auprès du bureau de l'Ombudsman;

CHAPITRE 7 : ONTARIO

117. Le gouvernement de l'Ontario a examiné ses lois, ses programmes et ses politiques avant que le Canada ne ratifie la Convention en juin 1987, et il en assure l'examen constant. Le gouvernement est convaincu que ses politiques, ses programmes et ses pratiques sont conformes aux dispositions de la Convention.

Article 2

118. L'article 7 du règlement d'application de la *Loi sur le ministère des Services correctionnels* interdit à tout employé du ministère de faire usage de la force contre un détenu, sauf dans des circonstances bien précises, par exemple, pour défendre un employé ou un détenu contre toute agression ou pour maîtriser un détenu rebelle ou agité. Tout employé qui a recours à la force doit, en vertu du règlement, rédiger un rapport sur l'incident. Tous les rapports sont examinés par les cadres supérieurs du ministère.

Article 10

119. Au cours de sa période de formation de base, le personnel des services correctionnels reçoit un enseignement portant expressément sur l'usage de la force et la façon de traiter les contrevenants. Dans le programme de formation de base, on étudie notamment les conventions des Nations Unies, les modifications apportées récemment au *Code criminel* pour ce qui est de la torture, ainsi que la *Charte canadienne des droits et libertés*. Des cours de recyclage sont dispensés périodiquement pour assurer l'actualisation des connaissances du personnel en matière de pratiques et de méthodes correctionnelles.

120. Dans le cadre des programmes de formation offerts à l'École de police de l'Ontario, la province a commencé à diffuser ce genre d'information bien longtemps avant la signature de la Convention.

121. Plus précisément, le cours de base qui est obligatoire pour tous les aspirants policiers de la province traite des modalités d'arrestation, de l'usage de la force et des responsabilités criminelles et civiles des agents qui emploient une force excessive. La durée du cours est consacrée dans une proportion de 20 p. 100 à des exercices pratiques au cours desquels la réaction de l'agent à des situations hypothétiques est observée et débattue. Dans le cours de formation avancé pour les agents de niveau supérieur, on étudie la jurisprudence se rattachant aux principes pertinents inscrits dans la *Charte canadienne des droits et libertés*. De même, à un niveau encore plus élevé, le cours sur les enquêtes criminelles à l'intention des détectives aborde également ce sujet.

Article 11

122. Le ministère du Solliciteur général étudie de façon constante les politiques et les méthodes d'incarcération et d'interrogatoire et, au besoin, modifie en conséquence les directives administratives et autres à l'intention des agents de police.

123. Même si, dans la province, la plupart des cas de détention relèvent du ministère des Services correctionnels, les organismes chargés de l'application de la loi gardent aussi des personnes dans des lieux de détention provisoire. Divers systèmes d'auto-contrôle sont

Articles 6 et 7

112. La Loi sur la liberté de la personne (*Liberty of Subject Act*), R.S.N.S. 1967, c. 164, constitue la législation provinciale relative à l'*habeeas corpus*. Elle garantit qu'il n'y aura pas d'abrogation ou de réduction de la réparation par l'ordonnance d'*habeeas corpus* de *common law*, et elle garantit que la réparation existe pleinement et qu'elle est un droit indubitable des citoyens de cette province. En plus de la réparation d'*habeeas corpus*, la réparation civile est également maintenue.

Article 10

113. La Loi sur la police (*Police Act*), S.N.S. 1974, c. 9, institue la Commission de police de la Nouvelle-Ecosse qui existe depuis 1974. La Commission de police élabore et approuve des programmes de formation conçus pour créer entre le public et la police une compréhension réciproque des fonctions, devoirs et responsabilités de la police, et pour promouvoir les relations de la police avec la collectivité. Le Procureur général peut demander à la Commission d'enquêter et de lui faire rapport sur toute question relative à des plaintes concernant la conduite et les actions des agents de police.

Article 11

114. La Loi sur les services correctionnels (*Corrections Act*), S.N.S. 1986, c. 6, prévoit la détention sûre et la sécurité des délinquants. Les règlements découlant de cette loi assurent que toute personne privée de sa liberté sera traitée avec respect et dignité.

Article 12

115. En vertu de la Loi sur les enquêtes en cas de décès (*Fatality Inquiries Act*), R.S.N.S. 1967, c. 101, lorsqu'il y a motif raisonnable de soupçonner qu'une personne est décédée à la suite de violence, par des moyens illégitimes ou par négligence coupable, ou en prison, ou dans des circonstances exigeant une enquête en vertu de toute autre législation, ou pour une cause indéterminée, le médecin légiste chef de la province devra procéder avec diligence à une enquête concernant la cause du décès et la manière dont il a eu lieu, et il soumettra un rapport au Procureur général qui peut ordonner une enquête plus approfondie si nécessaire.

Article 14

116. La Loi d'indemnisation des victimes d'actes criminels (*Compensation for Victims of Crime Act*), S.N.S. 1975, c. 8, a institué la Commission d'indemnisation des victimes d'actes criminels (*Criminal Injuries Compensation Board*). Cette commission a le pouvoir d'ordonner un dédommagement non seulement à la victime du crime, mais également à une personne qui est responsable du soutien de la victime ou aux dépendants de la victime lorsqu'il y a eu décès de la victime.

Article 14

106. Les victimes ou les personnes à charge des victimes de torture peuvent faire appel au droit civil pour obtenir réparation. Un droit d'intenter des poursuites au civil est énoncé dans la *Loi sur les poursuites contre la Couronne (The Proceedings Against the Crown Act)*, S.N. 1973, c. 59, qui impute à la Couronne tout acte criminel perpétré par l'un de ses agents. S'il y a décès de la victime, une action en dommages peut être intentée aux termes de la *Loi sur les accidents mortels (The Fatal Accidents Act)*, R.S.N. 1970, c. 126, au profit de l'époux, de l'épouse, des parents et des enfants de la victime. Les termes «parents» et «enfants» sont définis de façon très large.

107. La *Loi sur l'indemnisation des victimes d'actes criminels (The Criminal Injuries Compensation Act)*, R.S.N. 1970, c. 68, établit une commission chargée de l'indemnisation des victimes, des personnes à charge des victimes ou des personnes qui avaient la charge des victimes, dans le cas d'infractions contre la personne commises en violation du *Code criminel*. Cette loi fut modifiée en 1988 et la torture est devenue un acte criminel donnant droit à indemnisation aux termes de la Loi et conformément à la Convention.

Article 16

108. La *Loi sur le bien-être de l'enfant (The Child Welfare Act)*, R.S.N. 1970, c. 37, autorise le gouvernement à intervenir pour protéger l'enfant lorsqu'il a des preuves suffisantes de négligence ou de mauvais traitements, que ce soit d'ordre physique, sexuel ou émotif.

CHAPITRE 6 : NOUVELLE-ÉCOSSE

109. Le Canada a ratifié la *Convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants* le 24 juin 1987. La Nouvelle-Écosse avait auparavant, soit le 10 décembre 1984, publié un énoncé de principe sur cette Convention. Le gouvernement de la Nouvelle-Écosse demandait alors à tous de prendre un engagement conscient quant au véritable sens de la Convention. (Une copie de l'énoncé de principe est attachée⁴.)

Article 2

110. Le ministère du Procureur général applique les dispositions du *Code criminel* du Canada.

111. La *Loi sur les poursuites sur déclaration sommaire de culpabilité de la Nouvelle-Écosse (Nova Scotia Summary Proceedings Act)*, S.N.S. 1972, c. 18, adopte la législation du *Code criminel* du Canada telle qu'elle s'applique aux infractions punissables sur déclaration sommaire de culpabilité.

⁴ Voir la note 1.

criminel. Les victimes de ces actes peuvent avoir recours aux tribunaux civils pour obtenir réparation.

Article 10

101. On fait part à toutes les personnes mentionnées à l'article 10 de la détermination d'un certain degré de force ou de la responsabilité à laquelle elles s'exposent si elles maltraitent les personnes à leur charge. La *Loi sur la force constabulaire royale de Terre-Neuve* (*The Royal Newfoundland Constabulary Act*), R.S.N. 1970, c. 58, établit la force constabulaire de Terre-Neuve et interdit aux agents du personnel de faire montre de cruauté ou d'employer une force excessive. Cette interdiction s'applique également aux gardiens de prison aux termes du règlement sur les prisons (1985) établi en application de la *Loi sur les prisons* (*The Prisons Act*), R.S.N. 1970, c. 305. Ces lois prévoient également des mesures disciplinaires en cas de mauvais traitements infligés aux prisonniers ou à d'autres personnes, qui sont considérés comme des infractions particulières.

Article 11

102. La *Loi sur les prisons* vise à assurer la détention et la sécurité des prisonniers. Le règlement établi en application de cette loi stipule que les prisonniers doivent être traités dans le respect de la dignité de la personne humaine et que les agents du personnel doivent agir de façon impartiale, et sans favoritisme, à l'égard de tous les détenus. On retrouve des dispositions analogues dans la *Loi sur la force constabulaire royale de Terre-Neuve*.

Article 12

103. La *Loi sur les poursuites sommaires* prévoit la tenue d'une enquête judiciaire en regard au décès d'une personne lorsque'il y a des motifs raisonnables de soupçonner que sa mort est attribuable à un acte de violence, à une négligence, à un écart de conduite ou à toute autre action inique perpétrée pendant que la personne décédée était en détention ou dans d'autres circonstances qui font peser des soupçons sur les circonstances du décès.

Article 13

104. La *Loi sur la Gendarmerie royale du Canada*, la *Loi sur la force constabulaire royale de Terre-Neuve* et la *Loi sur les prisons* établissent les procédures à suivre pour étudier les plaintes déposées contre des agents de la paix qui auraient violé la loi ou les règlements et, de ce fait, la Convention. Il existe un système interne de griefs à l'intention des détenus des établissements provinciaux; comme tout autre citoyen, ils peuvent également faire appel à l'appareil judiciaire pour tenter des poursuites criminelles ou civiles.

105. Le *Règlement de 1985 sur les prisons* prévoit la protection des droits des prisonniers, comme, par exemple, la réception et l'expédition du courrier, les visiteurs, etc. En outre, la *Loi sur le commissaire parlementaire* (*Ombudsman*) (*The Parliamentary Commissioner (Ombudsman) Act*), R.S.N. 1970, c. 285, stipule que toute personne en détention ou tout patient d'un établissement psychiatrique désigné a le droit de correspondre librement avec l'ombudsman.

Article 14

93. La Loi sur l'indemnisation des victimes d'actes criminels, S.R.N.B. 1973, c. C-14, permet à un tribunal d'accorder une indemnisation pour «douleurs et souffrances».

Article 15

94. Le chapitre 31 du Guide des politiques et procédures de la Commission de police du Nouveau-Brunswick précise que le but de la mise en garde est de faire tomber la crainte que le suspect peut éprouver du fait qu'il a été arrêté, et pour l'informer qu'il a le droit de garder le silence.

Article 16

95. L'article 18 de la Loi sur les services correctionnels dispose que les traitements destinés à réadapter une personne peuvent comprendre les travaux forcés même si la chose n'est pas explicitement mentionnée dans la sentence.

96. La Loi sur les services correctionnels dispose qu'il faut prévoir un isolement convenable et des traitements appropriés pour les détenus.

CHAPITRE 5 : TERRE-NEUVE

97. Avant la ratification par le Canada de la Convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants, le 24 juin 1987, le ministère de la Justice de Terre-Neuve avait étudié toutes les lois provinciales et avait jugé qu'elles étaient conformes à la Convention. Le présent rapport mentionne les lois et règlements qui étaient en vigueur le 1^{er} juillet 1988 et qui ont un lien avec la mise en oeuvre des dispositions de la Convention à Terre-Neuve.

Article 2

98. Le ministère de la Justice met à exécution, au nom de la Couronne, les dispositions du Code criminel du Canada. La Loi sur les poursuites sommaires (*The Summary Proceedings Act*), S.N. 1979, c. 35, adopte, pour les déclarations sommaires de culpabilité dans la province, les dispositions du Code criminel.

99. Le ministère de la Justice est chargé d'appliquer la Loi de 1975 sur les services correctionnels destinés aux adultes (*The Adult Corrections Act*, 1975, S.N. 1975, c. 12, qui régit, à Terre-Neuve, les services des libérations conditionnelles et les services correctionnels communautaires. Le ministère des Services sociaux est chargé de l'application des dispositions de la Loi sur les jeunes contrevenants (loi fédérale) et de la Loi sur les infractions des jeunes personnes (*The Young Person Offences Act*), S.N. 1984, c. 2, qui s'appliquent aux services correctionnels de la province destinés aux jeunes.

Articles 6 et 7

100. Toute personne qui a ou est réputée avoir commis une infraction aux termes de l'article 4 est soumise au cours normal de la loi et peut être poursuivie aux termes du Code

85. La Loi sur l'habéas corpus, S.R.N.B. 1973, c. H-1, prévoit la possibilité de demander à un juge de la Cour du Banc de la Reine de déterminer si l'emprisonnement est légal. Le juge peut ordonner la libération immédiate de prison s'il considère que la détention n'est pas légale.

86. Les personnes présumées coupables de l'une ou l'autre des infractions mentionnées à l'article 4 sont soumises à l'application régulière de la loi, ce qui comprend les poursuites en vertu du *Code criminel* et les recours disponibles par le truchement des tribunaux civils.

Article 10

87. La Loi sur la Police, S.R.N.B. 1973, c. P-9.2, prévoit la création de la Commission de police du Nouveau-Brunswick, qui existe depuis 1977. La Commission de police a diverses fonctions et attributions, mais, pour ce qui est de cet article, elle vérifie et inspecte les dossiers et procédures des forces de l'ordre, favorise la sensibilisation des policiers et contribue à l'assurer, et établit des programmes et des méthodes destinés à faire comprendre à la population les fonctions de la police.

88. La Commission de police a établi un certain nombre de lignes directrices sur la façon dont les agents peuvent se comporter. On en trouve l'énoncé dans le *Guide des politiques et procédures de la Commission de police du Nouveau-Brunswick*.

Article 11

89. En vertu du régime juridique du Nouveau-Brunswick, seulement un infime pourcentage des personnes accusées sont renvoyées en détention provisoire avant leur procès. La Loi sur les services correctionnels, S.R.N.B. 1973, c. C-26, dispose que tout établissement correctionnel est un lieu légitime de détention et de traitement des personnes qui attendent leur procès ou sont condamnées. La Loi dispose que les personnes ainsi détenues ou condamnées doivent être traitées de manière convenable et appropriée.

Article 12

90. Une procédure de traitement des plaintes et de discipline est prévue à l'article 22 de la Loi sur la Police. Elle vise les actions des agents de police qui sont réputées excéder les limites de leurs pouvoirs.

91. Des recours sont aussi prévus par le truchement des procédures criminelles et civiles de la province ou par l'entremise du Bureau de l'Ombudsman.

Article 13

92. Le chapitre 31 du *Guide des politiques et procédures de la Commission de police du Nouveau-Brunswick* exige que la police fasse au suspect la mise en garde suivante :

Vous n'êtes pas tenu de dire quoi que ce soit. Vous n'avez rien à espérer d'aucune promesse ou faveur et rien à craindre d'aucune menace, que vous disiez quelque chose ou non, mais tout ce que vous direz peut servir de preuve.

avec les membres du Cabinet et de l'Assemblée législative, avec les inspecteurs des centres psychiatriques et avec son avocat.

Article 14

77. Les victimes peuvent, de façon générale, tenter une poursuite au civil pour l'indemnisation des voies de fait, coups et blessures. Si la victime est morte, ses personnes à charge ont droit à l'indemnisation que la victime aurait reçue aux termes de la *Loi sur les accidents mortels*, S.R.M., c. F50.

78. La *Loi sur l'indemnisation des victimes d'actes criminels*, S.R.M. 1987, c. C305, prévoit une indemnisation pour les blessures ou la mort provenant de certains actes criminels, dont le meurtre, l'homicide involontaire coupable et le fait de causer des lésions corporelles.

Article 16

79. Aux termes de la *Loi sur la santé mentale*, le directeur peut ordonner le transfert dans un établissement d'une personne qui est déficiente mentalement et qui est détenue pour une infraction dans une prison ou dans un lieu de détention, autre qu'un pénitencier, ou gardée en sûreté et accusée d'une infraction, jusqu'à ce qu'elle soit assez bien pour être reconduite en prison ou jusqu'à ce qu'elle soit libérée.

80. Dans le cas des contrevenants qui sont atteints de troubles mentaux et qui font l'objet de poursuites criminelles, le Conseil consultatif d'appel du lieutenant-gouverneur se réunit régulièrement pour revoir ces cas et faire des recommandations au lieutenant-gouverneur dans l'intérêt de ces personnes, mais sans oublier l'intérêt du public, avec l'idée de leur faire subir un traitement médical si c'est possible.

81. Il est contraire à la *Loi sur la santé mentale* pour tout administrateur, infirmière, aide, préposé ou personne employée dans un établissement psychiatrique, ou pour toute autre personne responsable des soins, de la garde, du contrôle ou de la surveillance d'une personne atteinte de troubles mentaux, de maltraiter ou de négliger volontairement la personne atteinte de troubles mentaux.

CHAPITRE 4 : NOUVEAU-BRUNSWICK

82. Le présent rapport fait état des lois, des règlements, des politiques et des programmes qui se rapportent à la mise en oeuvre de la Convention contre la torture au Nouveau-Brunswick.

83. Absolument rien dans les lois et les politiques du Nouveau-Brunswick ne justifie le recours à la torture. Nul fonctionnaire ni organisme du Nouveau-Brunswick n'a le droit ou n'est autorisé à avoir recours à la torture ou à en justifier l'usage.

Article 2

84. Le ministère de la Justice du Nouveau-Brunswick applique dans la province les dispositions du *Code criminel* du Canada.

Article 10

71. Établie en vertu de la *Loi sur la Sûreté du Manitoba*, S.R.M. 1987, c. P150, la Commission de police du Manitoba est chargée de promouvoir la prévention de la criminalité, l'efficacité des services de police et les relations entre la police et la collectivité dans la province; à ces fins, elle peut faire des recommandations relativement à la formation des agents de police de la province. De façon à respecter les obligations de la province aux termes de la Convention, tous les services de police de Manitoba ont été priés de modifier leur guide de formation, d'en parler lors des séances de formation, de réviser les procédures relatives aux interrogatoires et à la détention et de veiller à ce que tous les agents soient bien au courant des exigences de la Convention. Tous les services de police du Manitoba se sont, semble-t-il, pliés aux exigences fondamentales de la Convention.

72. On a fait part aux institutions psychiatriques de leurs obligations aux termes de la Convention.

Article 12

73. La tenue d'une enquête est nécessaire aux termes de l'article 9(3) de la *Loi sur les enquêtes médico-légales*, S.R.M. 1987, c. F52, dans les cas où il y a des motifs raisonnables de soupçonner qu'une personne est décédée dans un établissement de correction ou dans une prison ou pendant qu'elle était résidente involontaire d'un établissement dans la province par suite d'un acte de violence, de moyens excessifs ou d'un acte de négligence coupable ou que le décès de ladite personne est survenu soit de façon inattendue ou inexplicable, soit de façon soudaine des suites d'une cause inconnue, ou qu'une personne est décédée par suite des agissements d'un agent de la paix dans le cadre de ses fonctions.

Article 13

74. Aux termes de l'article 6(1) de la *Loi sur les enquêtes relatives à l'application de la loi*, S.R.M. 1987, c. L75, toute personne qui se croit lésée par suite d'une faute disciplinaire commise par un membre d'un service de police peut déposer une plainte auprès du Commissaire en vertu de la Loi. La définition de la faute disciplinaire comprend l'abus de pouvoir, notamment, procéder à une arrestation sans motif raisonnable ou probable ou faire usage de violence gratuite ou de force excessive. La peine prévue par la Loi va de l'avertissement au renvoi. De plus, si les pratiques organisationnelles ou administratives d'un service de police ont pu causer cette faute disciplinaire ou y contribuer, le Commissaire peut recommander les changements qui s'imposent.

75. L'article 15 de la *Loi sur l'ombudsman*, S.R.M. c. 045, permet à l'ombudsman de faire enquête sur tout acte relatif à l'administration gouvernementale, commis ou omis par un ministre ou organisme gouvernemental. Ainsi les personnes détenues dans des prisons provinciales et dans des institutions provinciales peuvent loger des plaintes. Cependant, les pouvoirs de l'ombudsman en matière de correction sont limités et l'enquête est discrétionnaire.

76. Aux termes de la *Loi sur la santé mentale*, S.R.M., c. M110, toute personne admise dans un centre psychiatrique doit recevoir par écrit l'exposé des fonctions de la Commission et la façon dont on peut lui présenter une cause et elle doit avoir le droit de communiquer

d'autorité par rapport aux enfants ont beaucoup préoccupé l'opinion publique. D'où l'initiative suivante :

On vérifie maintenant s'il existe un casier judiciaire dans le cas de tous les candidats à des postes au sein du gouvernement provincial ou d'organismes publics, où ils auraient travaillé avec des enfants. Cette vérification vise à repérer ceux qui auraient peut-être déjà infligé des mauvais traitements à des enfants, afin de les empêcher d'occuper de tels postes. Ce processus a fait l'objet d'un examen par le Bureau de l'Ombudsman, qui a publié, en avril 1987, un rapport intitulé « Recours à la vérification du casier judiciaire pour sélectionner les personnes appelées à travailler avec des personnes vulnérables » (Use of Criminal Records Checks to Screen Individuals Working with Vulnerable People). L'Ombudsman a cherché à mettre en équilibre les droits des personnes vulnérables (enfants, personnes âgées, personnes handicapées et personnes en établissements) avec ceux des employés et des employeurs éventuels. Les recommandations formulées dans le rapport ont été intégrées dans les procédures ministérielles pertinentes.

67. En 1987, le ministre du Procureur général a lancé un nouveau programme d'aide aux victimes afin de fournir des services aux victimes d'actes criminels. Les services offerts sont notamment les suivants : assistance pratique sur la scène du crime, aide pour l'établissement des formules, soutien émotif, transport à destination et en provenance de la cour, renseignements de base sur l'évolution de leur cause, recouvrement de leurs biens et autres détails d'ordre administratif. Une ligne en service libre-appel est prévue pour les demandes de renseignements ainsi qu'un programme d'indemnisation des victimes. Le programme est appliqué par des civils, employés et bénévoles, rattachés aux corps de police locaux, ainsi que par les membres du personnel des centres de soutien aux victimes d'agression sexuelles.

68. Le Procureur général a récemment déposé une nouvelle *Loi sur les droits de la victime et les services à lui offrir (Victim's Rights and Services Act)* (projet de loi 31). Seraient et de la poursuite relative à une infraction, le droit de faire des observations sur les répercussions d'un acte criminel et le droit d'obtenir restitution de la part du délinquant.

CHAPITRE 3 : MANITOBA

Article 2

69. Le ministère du Procureur général du Manitoba est responsable de l'application des dispositions du Code criminel au Manitoba, y compris les poursuites intentées pour les infractions contre la personne et les actes de torture tels que définis à l'article 245.4 du *Code criminel*.

70. Pour ce qui est des libérations conditionnelles et des services correctionnels au Manitoba, l'article 59 de la *Loi sur les services correctionnels*, SFM, c. C230, stipule que le directeur peut établir des règles et des ordonnances en regard à la conduite et aux fonctions des agents et employés des établissements correctionnels. De plus, l'article 61 de la Loi prévoit qu'on peut établir des règlements relatifs à la conduite et aux fonctions des agents et des employés des établissements correctionnels et à la formation du personnel.

66. Ces dernières années, certains cas de mauvais traitements d'ordre sexuel infligés à des enfants par des enseignants, des travailleurs sociaux et d'autres personnes en position

moral.

65. Environ 20 p. 100 des plaintes acceptées par le Conseil des droits de la personne de la Colombie-Britannique au cours de l'année financière 1986-1987 avaient trait au harcèlement sexuel. Dans un certain nombre de cas, le Conseil a ordonné de verser à la plaignante la somme maximale de 2 000 \$ prévue pour humiliation, embarras et préjudice

personnel.

64. Il est interdit de harceler sexuellement une employée en Colombie-Britannique. Les plaintes de cette nature sont acceptées en vertu de la *Loi sur les droits de la personne* (*Human Rights Act*), S.B.C. 1984, c. 22. Dans bon nombre des différents ministères du gouvernement de la Colombie-Britannique, des politiques particulières sont aussi prévues pour interdire ce genre de harcèlement à l'égard des employées par d'autres membres du

Article 16 : Autres actes constitutifs de peines ou traitements cruels, inhumains ou dégradants

c. 116.

63. La non-admissibilité d'éléments de preuve obtenus par la contrainte ou par la torture est établie par la jurisprudence relative à la *Loi sur la preuve* (*Evidence Act*), R.S.B.C. 1979,

Article 15 : Admissibilité d'éléments de preuve

hors cour de 52 500 \$ avec le plaignant.

62. Il existe aussi des recours civils pour les victimes. Dans la cause à laquelle il a été fait allusion au regard de l'article 13, la ville de Vancouver est parvenue à un règlement

relativement mineur qu'il avait subi.

61. Pour donner un exemple d'indemnisation visant des mauvais traitements infligés par un agent de la fonction publique, on peut songer à un cas qui a été examiné par l'Ombudsman en 1984. Une plainte pour mauvais traitements à l'endroit d'un patient du Forensic Psychiatric Institute a été jugée fondée et le membre du personnel en question a été congédié. Le patient a demandé une indemnisation pour traumatisme mental lié à l'événement. On lui a accordé une allocation à titre gracieux de 200 \$ pour le traumatisme

réclamations ont été déposées, au titre desquelles 4 millions de dollars ont été versés.

60. Le ministre du Procureur général est chargé de l'application de la *Loi sur l'indemnisation des victimes d'actes criminels* (*Criminal Injury Compensation Act*), R.S.B.C. 1979, qui prévoit l'indemnisation des victimes ou, si la victime est décédée, des personnes à charge de la victime pour diverses infractions criminelles. L'annexe de la Loi prévoit une liste de ces infractions, qui comprend les voies de fait, les voies de fait avec une arme causant des lésions corporelles, les voies de fait graves, causer, de façon illégale, des blessures corporelles, l'enlèvement, la détention illégale et l'intimidation. En conformité avec la Convention, on a procédé à l'examen de cette annexe pour s'assurer qu'elle couvre toutes les formes de mauvais traitements envisagés par la Convention. Les réclamations faites en vertu de la Loi sont réglées par la Commission des accidents du travail. En 1986, 1 659

Article 14 : Indemnisation de la victime

correctionnels. L'article 1 dispose que (traduction) « toute personne doit être traitée avec dignité et respectée dans ses droits » et l'article 12 que « les délinquants sont membres de la société et doivent être traités avec respect et dignité et être protégés contre les traitements cruels et inusités ». On trouve des règles plus détaillées concernant le traitement des détenus dans les *Règlements sur les centres correctionnels*, qui sont révisées régulièrement, la dernière fois en 1985.

Articles 12 et 13 : Plaintes et enquêtes

56. À l'intention des **détenus d'un centre correctionnel provincial**, une procédure de règlement des griefs est prévue à l'article 40 des *Règlements sur les centres correctionnels*. Les détenus peuvent porter plainte devant des fonctionnaires désignés, de même que devant l'Ombudsman provincial. Toute la correspondance pertinente est considérée comme étant confidentielle.

57. Quant aux **patients des établissements psychiatriques**, ils peuvent déposer une plainte auprès de tout membre du personnel ou du représentant du Bureau de l'Ombudsman provincial qui visite l'établissement toutes les semaines. On doit procéder à une enquête immédiatement et établir un rapport dans un délai de 48 heures. Le directeur exécutif de l'établissement doit renvoyer toute allégation sérieuse de mauvais traitements devant un comité d'enquête indépendant nommé par le ministre de la Santé, pour une éventuelle enquête plus approfondie. Si la plainte est adressée directement au représentant de l'Ombudsman, cette personne doit avoir accès à tous les dossiers nécessaires pour effectuer une enquête complète. Un agent de soutien bénévole peut être mis à la disposition du patient qui a subi les mauvais traitements présumés.

58. Les **membres du public** qui désirent déposer une plainte de mauvais traitements contre un agent de police peuvent le faire devant le constable en chef du corps de police en question. Les modifications déposées en mai 1988 à la *Loi sur la police* auraient pour effet d'ouvrir la possibilité de porter plainte devant un nouveau commissaire aux plaintes, qui serait employé par la Commission de police de la Colombie-Britannique.

59. Un cas actuellement à l'étude illustre le processus de traitement des plaintes. Un jeune homme a subi de graves blessures au genou alors qu'il était sous la garde de la police de la ville de Vancouver. La plainte qu'il a déposée devant le constable en chef a donné lieu à une enquête interne, dont les résultats n'ont pas satisfait le plaignant. La plainte a donc été renvoyée devant la Commission de la police de Vancouver pour examen. Celle-ci a tenu une enquête et des audiences, mais en raison des circonstances de la cause, n'a pas rendu de décision, demandant plutôt que la cause soit renvoyée devant la Commission de police de la Colombie-Britannique. La Commission de police a ordonné qu'une commission d'enquête formée de trois membres se penche sur l'affaire. Cette commission a remis son rapport à la mi-août 1988. Elle est arrivée à la conclusion que les agents de police impliqués s'étaient parjurés à tous les stades de l'enquête et qu'ils avaient manqué à leur serment d'office soit en participant activement aux mauvais traitements, soit en gardant le silence. Par suite du rapport de la commission, le procureur général a chargé un avocat-conseil spécial de la Couronne d'étudier la décision antérieure de ne pas porter d'accusations au criminel, de même que les sanctions disciplinaires prévues à l'origine. Seront aussi examinés le code général de déontologie des agents de police et la manière dont il est enseigné.

passibles de mesures disciplinaires : (traduction) « toute violence inutile à l'égard d'un prisonnier ou d'une autre personne qu'il peut être amené à côtoyer dans l'exercice de ses fonctions ».

b) Quant à la conduite des **agents de correction** chargés de la garde des délinquants, elle est régie par : la *Loi sur les services correctionnels* (*Correction Act*), R.S.B.C. 1979, c. 70; un énoncé de mission intitulé *Convictions, objectifs et stratégies* (Beliefs, Goals and Strategies) (Direction des services correctionnels de la Colombie-Britannique, ministère du Procureur général, révisé en mai 1986); et des procédures particulières énoncées dans les *Règlements sur les centres correctionnels* (*Correctional Centre Rules and Regulations*) 1986. Il est précisé à l'article 11 de ces règlements que l'on ne doit user de contraintes physiques que pour empêcher le détenu de se blesser ou de blesser les autres, durant son transport, ou pour éviter qu'il ne s'évade, et que le recours à des entraves autres que les menottes ou les fers aux pieds doit être signalé aux supérieurs. Conformément à l'article 22, il faut employer le moins de force possible pour procéder aux fouilles. Quant aux articles 35, 36, 37 et 38, ils énoncent les règles qui doivent régir le recours aux cellules d'isolement, y compris le droit du détenu aux repas, à l'exercice et à la surveillance d'un médecin.

c) Au principal **établissement psychiatrique** de la province, le Riverview Hospital, un certain nombre de politiques et de procédures ont trait à la déclaration et à l'étude des cas de mauvais traitements infligés aux patients. La politique n° A-42 énonce la marche à suivre pour rendre compte des cas de mauvais traitements infligés aux patients et pour faire enquête à ce sujet, tandis que la politique n° A-71 énonce le droit de l'Ombudsman provincial de faire enquête sur les accusations de mauvais traitements et de consulter tout document nécessaire au cours d'une telle enquête.

d) Aux termes de l'article 10 de la *Loi sur les coroners* (*Coroner's Act*), R.S.B.C. 1979, c. 68, un **coroner** doit faire enquête sur tous les cas de personnes décédées dans un établissement pénitentiaire ou une prison ou alors qu'elles étaient sous la garde d'un agent de la paix. En vertu de l'article 52, un coroner peut autoriser l'autopsie de toute personne décédée dans un hôpital ou un établissement, à la demande du conseil d'administration de cet établissement.

Article 10 : Formation des agents de la fonction publique

54. La formation des agents de police et des agents de correction est assurée par le Justice Institute, de Vancouver, qui relève du ministère du Procureur général. Pour compléter son programme de base, l'institut a mis sur pied un centre de formation en matière d'agressions familiales et de violences sexuelles, qui s'intéresse surtout à l'aspect justice criminelle de ce type de violence et où l'accent est mis sur l'intervention et la prévention. Afin de promouvoir le respect de la Convention, on procédera à un examen de la formation dispensée aux agents de police et de correction, au personnel des établissements psychiatriques et aux gardes-chasse (qui ont des pouvoirs d'agents de la paix en vertu de la *Loi sur la conservation de la faune* (*Wildlife Act*)) afin de s'assurer qu'il y est bien interdit au personnel d'avoir recours aux mauvais traitements.

Article 11 : Règles d'interrogatoire et dispositions concernant la garde

55. La deuxième partie du document intitulé *convictions, objectifs et stratégies* (Beliefs, Goals and Strategies) exige qu'on assure une protection suffisante aux détenus des centres

CHAPITRE 2 : COLOMBIE-BRITANNIQUE

49. Le Procureur général de la Colombie-Britannique s'est dit nettement en faveur de la ratification de cette convention afin d'exprimer son aversion à l'égard de la pratique de la torture (lettre du 19 septembre 1986 au Secrétaire d'Etat aux Affaires extérieures).

Introduction : Rôle de l'Ombudsman provincial

50. Si les différents ministères prennent des mesures législatives et administratives précises, l'esprit de cette convention est intégralement l'objet des préoccupations du **Bureau de l'Ombudsman**. Aux termes de la *Loi sur l'Ombudsman (Ombudsman Act)*, R.S.B.C. 1979, c. 306, cet organisme fait enquête sur les plaintes de la population contre les agents de la fonction publique. Pour faciliter l'accès des détenus d'établissements correctionnels et des patients d'hôpitaux psychiatriques au Bureau de l'Ombudsman, ces établissements font l'objet de visites régulières.

51. L'Ombudsman procède aussi à l'étude de secteurs particuliers de l'administration provinciale pour s'assurer que la procédure y est organisée de manière à répondre efficacement aux préoccupations de la population. Par exemple, une étude a été effectuée en 1986 au sujet de la **procédure de règlement des plaintes contre la police** afin de préciser qui devrait faire enquête et statuer sur les plaintes de la population contre des agents de police. Avant que la *Loi sur la police (Police Act)* puisse être modifiée, l'Ombudsman a pris des arrangements provisoires avec la Commission de police de la Colombie-Britannique quant à la manière de traiter les plaintes déposées contre des agents de police (voir les articles 12 et 13).

52. En 1986, le Bureau de l'Ombudsman s'est occupé de 792 plaintes en provenance de centres correctionnels pour adultes et pour jeunes, plaintes qui portaient sur diverses questions administratives, le traitement des détenus, certains programmes et certaines questions médicales, et dont un petit nombre avaient trait aux mauvais traitements infligés aux détenus. Cette même année, 277 plaintes en provenance de centres de traitements psychiatriques pour adultes et pour jeunes ont été étudiées et réglées. L'extrait ci-joint du rapport annuel de l'Ombudsman fait état d'un certain nombre de plaintes relatives à des mauvais traitements qui auraient été infligés à des détenus ou à des patients.

Article 2 : Mesures législatives... ou autres

53. Le ministre du Procureur général est chargé de l'application des dispositions statutaires et de la poursuite des auteurs d'infractions au *Code criminel* du Canada. Aucune disposition des lois ou des politiques de la Colombie-Britannique ne peut être invoquée pour justifier la torture ou d'autres traitements inhumains. Les lois, politiques et procédures sont données ci-dessous par secteur de programme :

a) Pour les **agents de police**, les normes de conduite sont établies par la *Loi sur la police*, R.S.B.C. 1979, c. 331, ainsi que par un *Code disciplinaire* inclus dans le règlement d'application de cette loi. L'alinéa 7b) du Code signale que les actions suivantes sont

Article 13

43. La Loi sur les services correctionnels stipule la conformité à la Loi sur l'ombudsman (Ombudsman Act) et la politique exige que «le courtier destiné à l'ombudsman ne peut être ouvert en aucune circonstance», sauf lorsque le ministre peut exempter un établissement correctionnel de se conformer à la Loi dans des circonstances où un paquet suspect pourrait créer une situation de nature à mettre la vie en danger.

44. La politique stipule de plus que, normalement, le courtier ne doit pas être ouvert s'il est adressé au Solliciteur général de l'Alberta, au sous-ministre, au sous-ministre adjoint, aux directeurs régionaux, aux membres de l'Assemblée législative de l'Alberta, aux membres du Parlement du Canada ou à l'Enquêteur correctionnel fédéral. Dans le cas où un directeur de centre autorise l'ouverture du courtier, un rapport écrit expliquant pourquoi il a été jugé nécessaire de le faire doit être envoyé au directeur régional.

45. En outre, en ce qui a trait à une audition relative à une plainte, un détenu peut demander une entrevue avec le directeur du centre et, s'il n'est pas satisfait de la réponse, rien n'empêche le détenu de poursuivre la plainte conformément à la Loi sur l'ombudsman.

(Voir également la réponse relevant de l'article 12.)

Article 14

46. Telle qu'amendée, la Loi d'indemnisation des victimes d'actes criminels (Criminal Injuries Compensation Act), R.S.A. 1980, c. C-33, institue une Commission d'indemnisation pour actes criminels, qui assure un dédommagement aux victimes d'infractions contre la personne mentionnées au Code criminel, aux personnes à charge de la victime ainsi qu'aux personnes ayant la charge de la victime.

47. Les victimes ou les personnes qui sont à leur charge peuvent également obtenir réparation en vertu du droit civil. Aussi, les personnes qui étaient à la charge de la victime ainsi que les autres membres de sa famille peuvent avoir droit à un dédommagement en vertu de la Loi sur les accidents mortels (Fatal Accidents Act), R.S.A. 1980, c. F-5. Le droit de poursuivre au civil est inclus dans la Loi sur les poursuites contre la Couronne (Proceedings Against the Crown Act), R.S.A. 1980, c. P-18, qui rend la Couronne responsable des dommages causés par ses officiers ou agents.

Article 16

48. La Loi sur le bien-être de l'enfance (Child Welfare Act), S.A. 1984, c. C-8.1, autorise le gouvernement à assurer la protection des enfants et à intervenir de leur part lorsqu'il y a preuve qu'un enfant est exposé à des abus physiques, sexuels ou émotionnels, ou à un risque substantiel d'abus. Il peut être important de faire remarquer que la législation et les politiques du ministère des Services sociaux de l'Alberta n'interdisent pas le châtiment corporel, à des fins disciplinaires, aux enfants qui sont en foyer d'accueil sous la tutelle du ministère.

(Voir également la réponse relevant de l'article 2.)

B. MESURES ADOPTÉES PAR LES GOUVERNEMENTS DES PROVINCES

CHAPITRE 1 : ALBERTA

Article 2

36. Le Procureur général de l'Alberta administre le *Code criminel* fédéral, par l'entremise de la poursuite de la Couronne. Le Code comprend des infractions contre la personne, notamment des actes et tentatives d'actes de torture.

37. Le Solliciteur général de l'Alberta administre la *Loi sur les services correctionnels* (*Corrections Act*), R.S.A. 1980, c. C-26, qui régit les services correctionnels et de mise en liberté en Alberta.

Articles 6 et 7

38. Une personne accusée d'avoir commis une infraction mentionnée à l'article 4 est soumise au processus judiciaire, incluant la poursuite en vertu du *Code criminel*, et la victime a recours aux réparations en s'adressant aux tribunaux civils.

Article 10

39. Les *Règlements sur les établissements correctionnels* établis en vertu de la *Loi sur les services correctionnels* exigent que les employés soient informés des interdictions concernant la torture et éliminent les pratiques du personnel à l'égard de l'usage de la force. Lors des révisions de la Loi et des *Règlements* en cours, il a été proposé que l'article 53 des *Règlements* soit éliminé afin que les *Règlements* soient conformes à des normes acceptables interdisant la torture.

Article 11

40. Un examen systématique du traitement des personnes en détention en vue de prévenir tout cas de torture ne fait pas partie de la législation actuelle, ni de la législation proposée. On s'occupera de l'esprit de cet article dans le projet de révision des *Règlements sur les établissements correctionnels*.

Article 12

41. La *Loi sur les enquêtes en cas de décès* (*Fatality Inquiries Act*), R.S.A. 1980, c. F-6, stipule qu'une enquête publique doit avoir lieu dans le cas d'accusations de torture ou de peines ou traitement cruel, inhumain ou dégradant. Une Commission d'examen procède aux enquêtes sur les décès suspects des personnes en détention sous toute forme. Les examinateurs médicaux nommés en vertu de la Loi ont des pouvoirs d'enquête exhaustifs.

42. S'ajoutant à la *Loi sur les enquêtes publiques* (*Public Inquiries Act*), R.S.A. 1980, c. P-29, cette loi donne au Procureur général le pouvoir d'ordonner des enquêtes judiciaires et d'obliger les témoins à dévoiler les renseignements nécessaires.

un tribunal compétent pour obtenir la réparation que le tribunal estime convenable et juste en regard aux circonstances. Cette disposition offre à une victime de torture un recours constitutionnel pour obtenir dédommagement et réparation pour des actes qui contreviennent à la Charte.

31. Il est également possible d'obtenir réparation devant les tribunaux civils de *common law* en ce qui concerne des actes tels que voies de faits, coups et blessures. Une telle réparation légale est disponible en dépit du fait que les mêmes actes puissent constituer un acte criminel et que l'accusé a été condamné ou acquitté au procès.

32. La *Loi sur la responsabilité de la Couronne* et la *common law* permettent également à des particuliers de poursuivre des agents de police, y compris les membres de la GRC. Le gouvernement est responsable de toute obligation, tout dédommagement ou dommages imputables à des agissements incorrects ou déraisonnables de ses employés. En vertu du *Code criminel*, une indemnisation peut également être ordonnée à l'égard de perte de biens lorsque la perte est facilement vérifiable (a. 653-655, appendice 4). Enfin, des modifications ont récemment été proposées au *Code criminel* qui, si elles étaient adoptées, rendraient la procédure au criminel, lors du procès et de la sentence, plus conforme et sensible aux besoins des victimes. Les faits saillants de ces amendements apparaissent à l'appendice 11.

Article 15

33. Le 1^{er} juin 1987, une disposition a été ajoutée au *Code criminel*, déclarant que, dans les procédures qui relèvent de la compétence du Parlement, une déclaration obtenue par la torture est inadmissible en preuve, sauf comme preuve que la déclaration a été obtenue de cette façon (appendice 3, a. 245.4(4)). De plus, au Canada, la règle de la *common law* en matière d'aveux a toujours interdit l'admission dans la procédure judiciaire de déclarations obtenues par la menace, la peur ou la promesse d'espoir ou de récompense, sauf comme preuve que la déclaration a été ainsi obtenue.

Article 16

34. Il faut se reporter à l'exposé de l'article 2 de ce rapport concernant les dispositions constitutionnelles et législatives qui interdisent les actes constituant des peines ou traitements cruels, inhumains ou dégradants. Dans le contexte de l'article 12 de la Charte (c'est-à-dire le droit à la protection contre tous traitements ou peines cruels et inusités), la Cour suprême du Canada a établi dans l'arrêt *Smith v. R.* que le critère qui doit être appliqué pour déterminer si une peine est cruelle et inusitée, consiste à se demander «si la peine infligée est excessive au point de ne pas être compatible avec la dignité humaine». Ainsi, la Cour a déclaré qu'une peine obligatoire de 7 ans pour importation de narcotiques était exagérément disproportionnée alors qu'elle pourrait être appliquée sans tenir compte de la gravité relative de l'infraction. La Cour a également fait remarquer que les peines ou traitements comme le châtiement corporel, la lobotomie et la castration (qui n'existent pas en droit canadien) seront toujours exagérément disproportionnés et incompatibles avec la dignité humaine.

35. Dans l'arrêt *Lyns v. R.*, la Cour suprême du Canada a établi que l'imposition d'une peine de détention indéterminée à un «délinquant dangereux» pour «services graves à la personne» ne contrevient pas à l'article 12 de la Charte. Selon la Cour, la peine prenait en considération la situation de ce genre de délinquant dont la conduite n'est pas soumise aux contraintes normales, de sorte qu'on peut s'attendre à de nouveaux actes de violence.

Article 12

26. La *Loi sur la Gendarmerie royale du Canada* exige que les agents remplissent toutes les fonctions qui leur sont confiées «en ce qui concerne le maintien de la paix, la lutte préventive contre le crime, les infractions aux lois du Canada...» (a. 18). La Loi exige également que chaque membre de la Gendarmerie, avant d'exercer ses fonctions, prête un serment d'allégeance et un serment d'office par lesquels il jure d'accomplir et de remplir «avec fidélité, diligence et impartialité les devoirs qui (lui) incombent» et d'observer et d'exécuter «toutes instructions et tous ordres légitimes» reçus «sans crainte de personne et sans faveur ni partialité envers qui que ce soit». (a. 15) (appendice 5).

Article 13

1. Généralités

27. Le document politique du gouvernement du Canada qui expose le but et les principes du droit criminel, *Le droit criminel dans la société canadienne* (Gouvernement du Canada, Ottawa, 1982), établit que «toute personne alléguant un traitement illégal ou incorrect de la part d'un fonctionnaire du système de justice criminelle doit avoir un accès facile à une juste procédure d'enquête et de réparation». Pour appliquer ce principe, le droit canadien permet à toute personne de porter plainte à la police. En outre, la personne peut porter des accusations et entamer des poursuites au criminel devant un juge en vertu de l'article 455 du *Code criminel* (appendice 4), et peut personnellement poursuivre pour l'infraction, sous réserve du droit du Procureur général d'intervenir et de se charger de la poursuite. De même, la protection des plaignants et des témoins est assurée de façon routinière au Canada, selon la nécessité, dans le cadre des responsabilités générales de l'Etat consistant à protéger ses citoyens.

2. Les mécanismes de plaintes

28. La *Loi modifiant la Loi sur la Gendarmerie royale du Canada*, S.C. 1986, c. 11, est récemment entrée en vigueur. Elle établit une procédure par laquelle tout particulier, qu'il soit touché personnellement ou non, peut déposer une plainte concernant la conduite des membres de la GRC en service. Les plaintes qui ne peuvent pas être traitées de façon informelle feront l'objet d'une enquête par la Gendarmerie et, si le plaignant est toujours insatisfait, l'affaire sera examinée par la Commission des plaintes du public. Dans des circonstances exceptionnelles, la Commission pourra faire une enquête sur une plainte ou instituer une audition sans que l'affaire soit d'abord examinée par la GRC. La Commission pourra ensuite transmettre ses recommandations au Commissaire de la GRC et au Solliciteur général du Canada. (Appendice 9).

29. Il existe également une procédure de plainte pour les détenus dans le Service correctionnel du Canada. Les précisions sur cette procédure apparaissent aux pages 17 à 19 de l'appendice 10, «Les droits et responsabilités des détenus et des détenues».

Article 14

30. Tel que mentionné à l'article 2, les actes de torture peuvent contrevenir à plusieurs articles de la *Charte canadienne des droits et libertés*. L'article 24(1) de la Charte permet à une personne, victime de violation ou de négation de ses droits ou libertés, de s'adresser à

norme de la preuve (c'est-à-dire au-delà de tout doute raisonnable) est la même pour toutes les infractions, qu'elles soient commises sur le territoire canadien ou à l'étranger. En outre, les dispositions de la *Charte canadienne des droits et libertés* visant à assurer des garanties juridiques (voir en particulier les articles 7 à 14 de l'appendice I) s'appliquent à quiconque est exposé à des poursuites au criminel au Canada.

Article 8

21. Un accord multilatéral prévoyant l'extradition de personnes pour certaines infractions peut être considéré par le Canada comme un accord obligatoire aux fins de la *Loi sur l'extradition*, S.R.C. 1970, c. E-21. Cet accord s'appliquerait, qu'il y ait ou non un traité en vigueur entre le Canada et l'autre Etat partie. En ce qui a trait à la loi et à la pratique de l'extradition au Canada, un délit de torture pourrait être traité comme s'il avait été commis non seulement à l'endroit où il s'est produit mais également sur le territoire canadien.

Article 9

22. Les traités d'extradition conclus par le Canada prévoient divers degrés d'assistance judiciaire réciproque entre les Etats parties. Par exemple, le traité existant entre les Pays-Bas et le Canada prévoit une procédure en affaires criminelles qui permet de recueillir le témoignage d'un témoin se trouvant dans l'autre pays (article XVII, appendice 7). De même, l'article 43 de la *Loi sur la preuve au Canada*, S.R.C. 1970, c. E-10, permet l'interrogatoire d'un témoin se trouvant au Canada dans le but d'assister un tribunal étranger dans toute affaire civile, commerciale ou criminelle (appendice 8).

Article 10

23. Le Programme de recrutement des agents du Service correctionnel, de même que les cours de perfectionnement sur les devoirs et obligations des agents du Service correctionnel, traitent de l'interdiction de la torture et d'actes semblables et comportent des cours sur la façon de déterminer le degré de force approprié. De même, les employés du Service correctionnel reçoivent une formation sur l'interprétation et l'application des dispositions pertinentes du *Code criminel*, des directives internes et des lignes directrices relatives à l'usage de la force (voir DC 605, appendice 6).

24. Chaque recrue de la GRC doit suivre des cours sur la «maîtrise des prisonniers», les «techniques d'interrogatoire» et le «droit criminel». Ces cours comprennent une formation sur l'usage de la force, les déclarations, les admissions et les aveux.

Article 11

25. En ce qui concerne le Service correctionnel du Canada, l'Inspecteur général entend des révisions périodiques de la conformité des établissements aux politiques et pratiques du Service correctionnel, de même qu'à la législation et aux règlements le régissant. La Direction générale des services d'application des lois de la GRC réalise également deux fois par année une révision complète du Manuel des opérations qui renferme des dispositions spécifiques sur l'interrogatoire et la détention de personnes.

Article 3

15. Dans l'arrêt *Schmidt v. La Reine*, la Cour suprême du Canada a déclaré que «le traité, l'audience d'extradition au Canada et l'exercice par l'exécutif de son pouvoir discrétionnaire d'extrader un fugitif doivent tous se conformer aux exigences de la Charte». La Cour a également déclaré que «dans certaines situations le traitement que l'Etat étranger réservera au fugitif extradé, que ce traitement soit ou non justifiable en vertu des lois de ce pays-là, peut être de telle nature que ce serait une violation des principes de justice fondamentale que de livrer un accusé dans ces circonstances». ([1987] 1 S.C.R., pages 20 à 22.)

Article 4

16. En vertu de l'article 24 du *Code criminel* (appendice 4), tenter de commettre n'importe laquelle des infractions contenues dans le Code constitue une infraction. Naturellement, cela inclut le délit de torture, traité à l'article 2 ci-dessus. Quiconque est déclaré coupable de torture est passible d'une peine d'emprisonnement ne dépassant pas quatorze ans (a. 245.4(1), appendice 3). Quiconque est déclaré coupable d'avoir tenté d'infliger une torture est passible d'une peine d'emprisonnement ne dépassant pas sept ans (a. 421(b), appendice 4).

Article 5

17. Le 1^{er} juin 1987, l'article 6 du *Code criminel* a été amendé pour donner aux tribunaux canadiens compétence sur la poursuite d'un délit de torture lorsque (i) l'action ou l'omission est commise à bord d'un navire ou d'un avion immatriculé au Canada; (ii) l'auteur de l'action ou l'omission, ou le plaignant, a la citoyenneté canadienne; ou (iii) l'auteur se trouve au Canada après la perpétration de l'action ou omission (appendice 3).

Article 6

18. Un agent de la paix qui a des motifs raisonnables de croire qu'une personne a commis un délit tombant sous le coup de la loi, comme la torture, peut arrêter cette personne sans mandat en vue de poursuites au criminel. De plus, tous les traités d'extradition conclus par le Canada stipulent qu'un mandat d'arrestation provisoire peut être obtenu afin d'assurer la détention physique d'un fugitif. Une personne arrêtée en vue d'une extradition sera remise en liberté si la documentation appropriée n'est pas reçue dans une certaine période, normalement 45 jours.

19. Le Manuel des opérations de la GRC stipule que toute personne arrêtée qui n'est pas un citoyen canadien ou un immigrant reçu poura communiquer immédiatement avec un représentant de son pays (appendice 5). Dans le cas des apatrides, le Canada s'apprête à inclure une mention sur ces personnes dans ses manuels de police dans l'ensemble du pays. De même, le Canada prend des dispositions pour s'assurer que les Etats visés à l'article 5, paragraphe 1, de la Convention soient avisés comme il se doit.

Article 7

20. Le Canada a compétence pour poursuivre une personne accusée d'un délit de torture dans toutes les circonstances envisagées dans l'article 5. En droit criminel canadien, la

3. Les dispositions juridiques régissant la police et les forces de sécurité

12. Outre les dispositions du *Code criminel* et les dispositions constitutionnelles mentionnées ci-dessus, l'usage de la force par des organismes policiers est réglementé par des dispositions législatives, réglementaires et administratives. Les normes établies dans ces dispositions rencontrent et souvent dépassent celles du *Code de conduite pour les responsables de l'application des lois* adopté par les Nations Unies.

13. Tout membre de la Gendarmerie royale du Canada (la «GRC») qui manque à son devoir de respecter les droits de toutes personnes ou qui abuse de son autorité en remplissant ses fonctions, en plus d'être passible de pénalités au criminel, est coupable d'une infraction au code de déontologie et passible d'une peine allant d'un simple avertissement au congédiement (*Loi modifiant la Loi sur la Gendarmerie royale du Canada*, S.C. 1986, c. 11, articles 37, 41(1), 43(1) et 45-12(3)) (appendice 9). De même, la GRC révisé actuellement ses directives internes pour s'assurer qu'elles se conforment à la Convention contre la torture. Le gouvernement fédéral fournit aux provinces (à l'exception du Québec et de l'Ontario) et aux territoires, en vertu d'une entente contractuelle, les services de police de la GRC. En conséquence, les dispositions relatives à la GRC dont il est question dans la partie fédérale du présent rapport s'appliquent également dans ces régions.

14. Il existe également des dispositions spéciales régissant le Service correctionnel du Canada en matière de protection contre les abus. Ces dispositions comprennent les mesures suivantes :

a) L'article 3.1 du *Règlement sur le service des pénitenciers*, promulgué le 17 mars 1988, interdit spécifiquement à tout membre du Service d'administrer une peine ou un traitement cruel, inhumain ou dégradant, à un délinquant qui est ou a été incarcéré dans un pénitencier, d'inciter à une telle condition ou d'y consentir expressément ou tacitement (appendice 6).

b) Les politiques visant à contrôler l'usage de la force par les membres du personnel leur demandent de s'abstenir de toute conduite abusive envers des détenus, y compris le fait d'infliger une peine corporelle ou un dommage à la personne. Quand la force est permise dans le but de maîtriser les détenus, elle ne peut pas être utilisée comme châtiment ou comme mesures disciplinaires (voir les Directives du Commissaire («DC») n° 605, appendice 6).

c) Le personnel peut être tenu responsable au criminel et au civil de tout usage excessif de la force. De plus, le Code de discipline demande au personnel de suivre les lois, les règlements et les politiques du Service correctionnel, et met cette exigence en application au moyen d'un système d'infractions de service. Tout employé du Service correctionnel qui ne se conforme pas à ces exigences peut faire l'objet d'une mesure disciplinaire allant de la réprimande au renvoi (voir DC n° 060, appendice 6), en plus de toute autre responsabilité au criminel ou au civil.

d) D'autres politiques du Service correctionnel du Canada exigent l'affectation d'observateurs communautaires dans les établissements à la suite d'un incident grave avec violence contre le personnel. De plus, les politiques du Service correctionnel assurent au contraire le droit d'accepter ou de refuser tout traitement médical (voir DC numéros 600 et 803, appendice 6).

DEUXIÈME PARTIE : INFORMATIONS CONCERNANT LES ARTICLES CONTENUS DANS LA PREMIÈRE PARTIE DE LA CONVENTION A. MESURES ADOPTÉES PAR LE GOUVERNEMENT DU CANADA

Article 2

1. La Charte canadienne des droits et libertés

8. Plusieurs dispositions de la *Charte canadienne des droits et libertés* s'appliquent à la prévention des actes de torture. L'article 12 garantit à chacun le droit à la protection contre tous traitements ou peines cruels et inusités. De plus, l'article 7 garantit à chacun le droit à la vie, à la liberté et à la sécurité de sa personne; il ne peut être porté atteinte à ce droit qu'en conformité avec les principes de justice fondamentale. De même, l'article 9 garantit le droit à la protection contre la détention ou l'emprisonnement arbitraires.

9. Toute personne, victime de violation des droits qui lui sont garantis par la Charte, peut s'adresser à un tribunal compétent pour obtenir la réparation que le tribunal estime convenable et juste eu égard aux circonstances (a. 24(1)). Lorsque des éléments de preuve ont été obtenus dans des conditions qui portent atteinte à un droit garanti par la Charte, ces éléments de preuve ne sont pas admis si, eu égard aux circonstances, leur utilisation est susceptible de déconsidérer l'administration de la justice (a. 24(2)). En outre, un tribunal doit déclarer inopérantes les dispositions de toute autre règle de droit qui sont incompatibles avec les dispositions de la Charte (a. 52).

2. Les dispositions législatives

10. Afin d'assurer l'observation de la Convention contre la torture, le Parlement a modifié le *Code criminel*, faisant ainsi de la torture une infraction spécifique (a. 245.4) (voir la *Gazette du Canada*, troisième partie du vol. 10, n° 2, c. 13, à l'appendice 3). Cet amendement interdit les actes de torture commis par des fonctionnaires, comme des agents de la paix, des fonctionnaires publics et des membres des forces armées, ou par des personnes agissant avec le consentement exprès ou tacite ou à la demande de telles personnes. Ne constitue pas un moyen de défense contre une accusation de torture le fait que l'accusé a obéi aux ordres d'un supérieur ou d'une autorité publique en commettant les actes qui lui sont reprochés; ces actes ne peuvent non plus être justifiés par des circonstances exceptionnelles, notamment un état de guerre, une menace de guerre, l'instabilité politique ou toute autre situation d'urgence.

11. De plus, la *Déclaration canadienne des droits* de 1960 et diverses autres dispositions du *Code criminel* interdisent une conduite qui peut constituer une torture ou une peine ou traitement cruel, inhumain ou dégradant. Par exemple, le *Code criminel* interdit des actes comme les voies de fait, avec ou sans lésion corporelle (a. 245), le fait de causer des lésions corporelles dans l'intention de blesser une personne ou de mettre sa vie en danger (a. 228), le fait d'administrer une substance délétère (a. 229), l'extorsion (a. 305) et l'intimidation (a. 381) (appendice 4).

les droits des particuliers devant les législatives et les gouvernements fédéral et provinciaux. Selon leur interprétation, les tribunaux estiment que cet article s'applique à l'ensemble des activités gouvernementales, y compris les pratiques administratives et les mesures de l'exécutif du gouvernement, ainsi qu'aux promulgations du Parlement ou des législatures (*Operation Dismantle et al. v. La Reine et al.*²).

6. L'article 1 de la Charte stipule que les droits et libertés qui y sont mentionnés peuvent être restreints par une règle de droit, dans la mesure où la justification des limites puisse se démontrer dans le cadre d'une société libre et démocratique. La Cour suprême du Canada a indiqué qu'une limitation, pour répondre aux exigences de l'article 1, doit viser un objectif suffisamment significatif et faire appel à des moyens raisonnables pour atteindre cet objectif (R. v. Oakes, appendice 2). L'article 33 de la Charte permet l'insertion d'une disposition dans la législation, permettant à cette législation d'avoir effet indépendamment des articles 2 ou 7 à 15 de la Charte. À cette fin, un gouvernement, fédéral ou provincial, doit insérer une disposition déclarant spécifiquement qu'il adopte la loi en dépit des dispositions spécifiées de la Charte et en outre la déclaration perd effet après cinq ans, à moins d'une nouvelle promulgation. Dans l'arrêt *Alliance des Professeurs de Montréal et al. v. A.G. du Québec*, la Cour d'appel du Québec a déclaré qu'une disposition qui invoque l'article 33 doit être expressément énoncée, doit faire partie de la loi qu'on veut exempter, et doit indiquer quelle disposition de la Charte sera outrepassée. De façon plus générale, la Cour a indiqué que l'article 33 doit être interprété strictement, en raison de son incidence sur les droits fondamentaux. En effet, on ne peut recourir à cet article sans provoquer un grand débat des remous politiques.

7. Le Canada est également une partie adhérente au *Pacte international relatif aux droits civils et politiques* qui stipule à l'article 7 que «nul ne sera soumis à la torture ni à des peines ou traitements cruels, inhumains ou dégradants». Le *Protocole facultatif* se rapportant au Pacte, auquel a également adhéré le Canada, permet à un particulier de présenter au Comité des droits de l'homme des Nations Unies une communication portant sur des présumées violations des dispositions du Pacte. De même, le 17 décembre 1982, conformément à la résolution 32/64 de l'Assemblée générale, le Canada a présenté une déclaration unilatérale contre la torture, à l'appui de la *Déclaration sur la protection de toutes les personnes contre la torture et autres peines ou traitements cruels, inhumains ou dégradants*.

Des exemplaires des arrêts mentionnés dans cette partie et dans la portion fédérale de ce rapport apparaissent à l'appendice 2.

INTRODUCTION

1. La Convention des Nations Unies contre la torture et autres peines ou traitements cruels, inhumains ou dégradants a été adoptée par l'Assemblée générale des Nations Unies le 10 décembre 1984, et est entrée en vigueur le 26 juin 1987. Le Canada a ratifié la Convention le 24 juin 1987.

2. Ce rapport, qui couvre principalement la période comprise entre le 24 juillet 1987 et le 31 mars 1988, est présenté conformément à l'article 17 de la Convention. La première partie situe la Convention dans le contexte du système constitutionnel canadien, alors que la deuxième partie mentionne les mesures en vigueur au niveau fédéral et aux niveaux provinciaux et territoriaux pour rendre effectives les dispositions de la Convention.

PREMIÈRE PARTIE : RENSEIGNEMENTS GÉNÉRAUX

3. Le Canada est un Etat fédéral constitué de dix provinces et deux territoires. Dans la Confédération canadienne, ce sont le Parlement du Canada et les législatures provinciales qui exercent les pouvoirs législatifs selon la répartition des pouvoirs législatifs établie dans la *Loi constitutionnelle de 1867* (autrefois *l'Acte de l'Amérique du Nord britannique, 1867*) et ses amendements. En vertu d'une délégation des pouvoirs par le Parlement fédéral aux territoires, les deux assemblées territoriales exercent également une autorité législative sur certaines questions.

4. Au Canada, le droit conventionnel international ne fait pas automatiquement partie du droit national. Les dispositions d'un traité peuvent être incorporées dans une loi intérieure par voie de promulgation qui donne force de loi au traité, ou par une modification à la loi intérieure, selon la nécessité, afin de la rendre compatible au traité. La mise en application d'un traité dont les dispositions tombent sous la compétence de l'un ou l'autre, ou des deux paliers de gouvernement, exige l'intervention du Parlement canadien, des législatures provinciales et, à moins que le Parlement en décide autrement, des assemblées législatives territoriales pour les parties du traité qui relèvent de la compétence de chaque palier de gouvernement. Le Parlement n'ayant pas compétence pour mettre en vigueur toutes les obligations que le Canada a contracté envers la communauté internationale en ratifiant la Convention, des consultations exhaustives ont été nécessaires entre le gouvernement fédéral et les gouvernements provinciaux, consultations dans lesquelles les provinces ont entrepris d'assurer la conformité aux dispositions de la Convention qui relèvent de leur compétence législative exclusive.

5. Une personne qui allègue une infraction à une disposition de la Convention peut recourir aux réparations prévues dans la loi canadienne ou dans la *Charte canadienne des droits et libertés* («la Charte») (ci-jointe à l'appendice 1¹). La Charte a été incorporée dans la constitution canadienne le 17 avril 1982, en vertu de la *Loi constitutionnelle de 1982 (Loi constitutionnelle de 1982, c. 11 (R.-U.))*. Elle garantit certaines libertés fondamentales et certains droits juridiques, y compris le droit de chacun à la protection contre tous traitements ou peines cruels et inusités (a. 12). En vertu de l'article 32, la Charte garantit

¹ Les appendices au présent rapport sont soumis séparément. La liste apparaît à l'annexe 1.

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* Les textes dont la liste figure sur cette page, y compris l'annexe 1, constituent le rapport initial du Canada qui a été soumis aux Nations Unies le 16 janvier 1989. Les autres documents, annexes 2 à 8 (verso), ont été ajoutés pour fins de publication au Canada.

AVANT-PROPOS

Le 10 décembre 1984, l'Assemblée générale des Nations Unies a adopté la *Convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants*.

Le Canada a collaboré activement à l'élaboration de la Convention, en particulier dans le cadre des travaux de la Commission des droits de l'homme des Nations Unies, et il a appuyé son adoption par l'Assemblée générale. Par la suite, le gouvernement du Canada a entrepris des consultations avec les gouvernements des provinces et des territoires en vue de la signature et de la ratification de la Convention. Ayant obtenu leur accord, le gouvernement du Canada a signé la Convention le 23 août 1985 et l'a ratifiée le 24 juin 1987. La Convention est entrée en vigueur pour le Canada le 24 juillet 1987.

Cette Convention oblige les Etats parties à empêcher la torture dans les territoires sous leur juridiction et à faire de la torture une infraction au regard de son droit pénal. Aucune circonstance - état de guerre, situation d'urgence, ordre d'une autorité supérieure, ou tout autre motif - ne peut être invoquée pour justifier la torture. Le traité prévoit l'extradition des responsables. En cas de non extradition, l'Etat où l'auteur d'une telle infraction est découvert doit poursuivre ce dernier en justice sous certaines conditions, ceci en application du concept exceptionnel de «juridiction pénale universelle». Les Etat parties doivent aussi prévoir le droit des victimes à indemnisation et réadaptation.

Un Comité contre la torture a été constitué pour veiller à l'application de la Convention. Le Comité est composé de dix experts siégeant à titre personnel. Les membres du Comité sont élus par les Etats parties, compte tenu d'une répartition géographique équitable (la liste figure à l'annexe 4).

En vertu de l'article 20 de la Convention, le Comité contre la torture a des pouvoirs étendus concernant l'examen des renseignements crédibles indiquant que la torture est pratiquée systématiquement dans un Etat partie, à condition que cet Etat n'ait pas rejeté cette disposition lors de la ratification de la Convention. Le Canada a accepté cette disposition. De plus, ayant obtenu l'accord de tous les gouvernements provinciaux et territoriaux, le gouvernement du Canada s'apprête à accepter les procédures de plaintes des particuliers et des Etats prévues aux articles 21 et 22 de la Convention. Ces procédures sont facultatives; les Etats qui veulent s'y soumettre doivent faire des déclarations expresses à cet effet. Un certain nombre des pays qui ont ratifié la Convention ont accepté ces procédures (voir l'annexe 3).

Les Etats parties doivent présenter au Comité contre la torture des rapports concernant les mesures qu'ils ont prises pour assurer l'application de la Convention. Le rapport initial du Canada a été présenté le 16 janvier 1989. Il sera examiné par le Comité contre la torture en présence d'une délégation canadienne au cours de la session qu'il tiendra en novembre 1989. Ce rapport constitue la pièce maîtresse du présent document. Il y est reproduit intégralement. Le rapport est le fruit d'une étroite collaboration entre le gouvernement fédéral et les gouvernements des provinces et des territoires, la plupart des gouvernements ayant préparé leur propre section. La première partie et la section portant sur le gouvernement du Canada ont été préparées par le ministère de la Justice du Canada.

Le rapport est publié au Canada dans le cadre du programme de sensibilisation aux droits de la personne de Multiculturalisme et Citoyenneté Canada. Pour le bénéfice des lecteurs, le texte de la Convention a été ajouté en annexe ainsi que des informations d'intérêt courant, dont la liste des Etats parties à la Convention, des informations sur le Comité contre la torture et sur le Fonds de contributions volontaires pour les victimes de la torture, un aperçu des mesures adoptées pour la mise hors la loi de la torture, les modifications apportées au *Code criminel* du Canada et des suggestions de lecture.

Nul ne sera soumis à la torture, ni à des peines ou traitements cruels, inhumains ou dégradants. (Déclaration universelle des droits de l'homme - article 5)

1. Tout Etat partie prend des mesures législatives, administratives, judiciaires et autres mesures efficaces pour empêcher que des actes de torture soient commis dans tout territoire sous sa juridiction.
2. Aucune circonstance exceptionnelle, quelle qu'elle soit, qu'il s'agisse de l'état de guerre ou de menace de guerre, d'instabilité politique intérieure ou de tout autre état d'exception, ne peut être invoquée pour justifier la torture.
3. L'ordre d'un supérieur ou d'une autorité publique ne peut être invoqué pour justifier la torture. (Convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants - article 2)

Chacun a droit à la protection contre tous traitements ou peines cruels et injustes. (Charte canadienne des droits et libertés - article 12)

Le titre de ce rapport est emprunté à un document des Nations Unies intitulé "Mise hors la loi d'une abomination séculaire : la TORTURE". Département de l'information, Nations Unies, New York, 1985.

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CONVENTION CONTRE LA TORTURE ET AUTRES PEINES OU
TRAITEMENTS CRUELS, INHUMAINS OU DÉGRADANTS

PREMIER RAPPORT DU CANADA

MULTICULTURALISME ET CITOYENNETÉ CANADA

OTTAWA
1989

**MISE HORS
LA LOI D'UNE
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la TORTURE**

Convention contre la torture

et autres peines

ou traitements cruels,

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OUTLAWING AN ANCIENT EVIL: TORTURE

**Convention against Torture
and Other Cruel, Inhuman or
Degrading Treatment or Punishment**

SECOND REPORT OF CANADA



Multiculturalism and
Citizenship Canada

Multiculturalisme et
Citoyenneté Canada

Canada

OUTLAWING AN ANCIENT EVIL: TORTURE
CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR
DEGRADING TREATMENT OR PUNISHMENT

SECOND REPORT OF CANADA

covering the period
April 1, 1988 to
December 31, 1991

MULTICULTURALISM AND CITIZENSHIP CANADA

OTTAWA

The title of this report is taken from a United Nations document entitled "Outlawing an Ancient Evil: TORTURE". Department of Public Information, United Nations, New York, 1985.

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FOREWORD

The *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* was adopted by the United Nations General Assembly on December 10, 1984. With provincial and territorial governments support, the Government of Canada signed the Convention on August 23, 1985, and ratified it on June 24, 1987. The Convention came into force for Canada on July 24, 1987. As of December 31, 1991, 64 States were party to the Convention.

The Convention obliges States Parties to prevent torture in their jurisdictions and to make torture a punishable offence. No circumstances may be invoked to justify torture. The treaty provides for extradition of torturers. Failing extradition, the States where the torturers are found shall prosecute them under certain conditions. States Parties also must provide for the right of victims to compensation and rehabilitation.

A Committee against Torture was set up to oversee implementation of the Convention. The Committee consists of 10 experts, elected by States Parties to serve in their personal capacity, consideration having been given to equitable geographical distribution. A Canadian, Mr. Peter Thomas Burns, serves on the Committee.

Under article 20 of the Convention, the Committee has the far-reaching power to examine, *ex officio*, reliable information alleging the systematic practice of torture in a State Party, provided the State Party did not reject this provision upon ratification of the Convention. Canada has accepted this provision. Further, having obtained the support of all provincial and territorial governments, the Canadian government has accepted the complaint procedures for individuals and States provided for under articles 21 and 22 of the Convention. These procedures are optional. As of December 31, 1991, 29 States had accepted the procedures provided for under article 21 and 28, those under article 22.

States Parties are required to report to the Committee against Torture on measures they have taken to give effect to the Convention. Canada's first report was submitted January 16, 1989 and was reviewed by the Committee during its November 1989 session in the presence of a Canadian delegation. The present report is the second to be submitted by Canada under the Convention. It is the result of close collaboration between the federal government and the provincial and territorial governments, most governments having prepared their own section. Part one and the federal section were prepared by the federal Department of Justice.

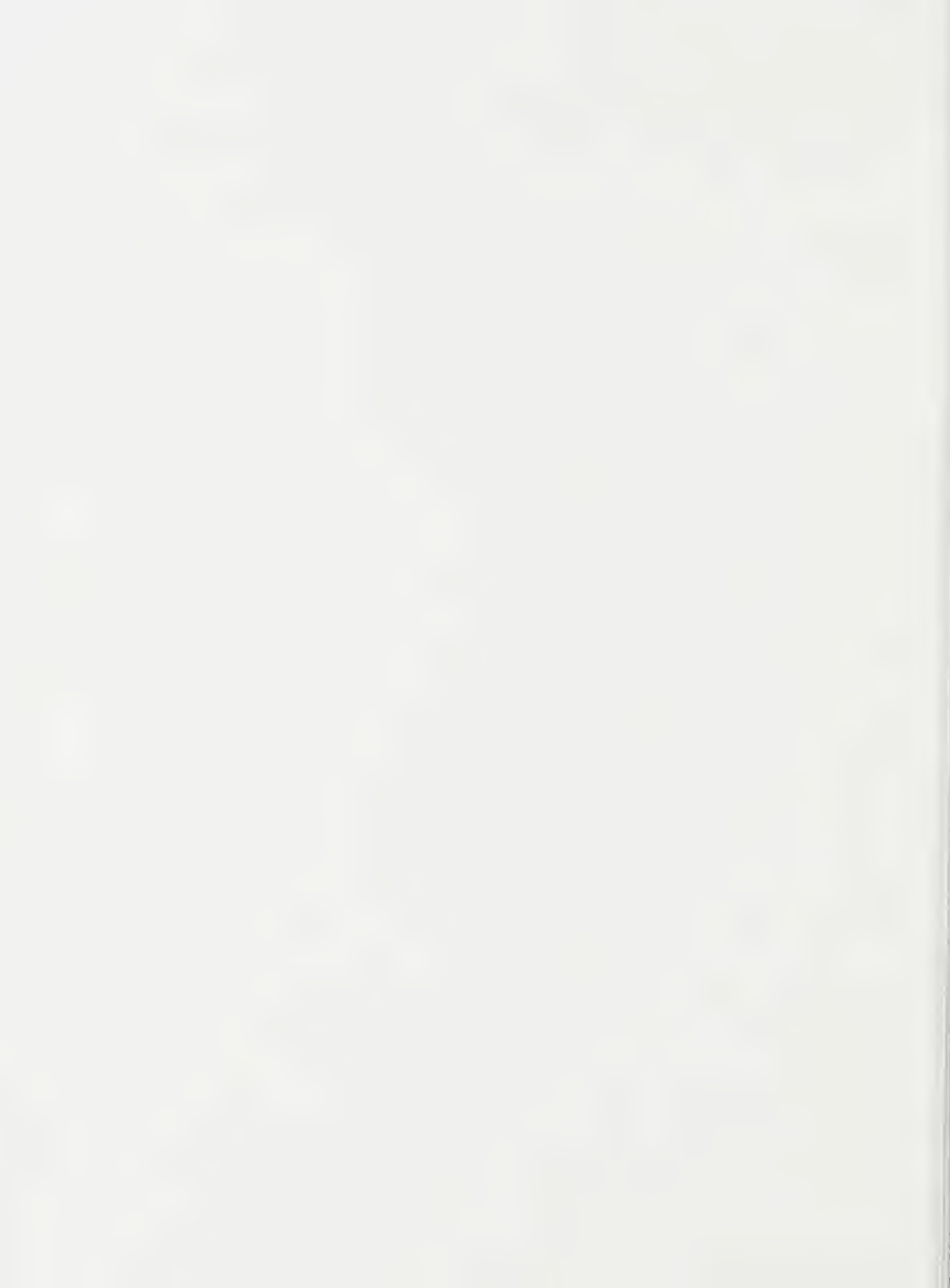
The report is published in Canada as part of the human rights educational program of Multiculturalism and Citizenship Canada. Copies can be obtained through the Communications Branch or the Human Rights Directorate of that department or through any of its regional offices.

August 1992

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* Geographical order, from east to west.



INTRODUCTION

1. The United Nations *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* was ratified by Canada on June 24, 1987. This is Canada's second report under the Convention. It covers the period from April 1, 1988 to December 31, 1991. Part One outlines generally Canada's constitutional structure as it relates to the Convention and parts Two, Three and Four update from the first report the measures undertaken at the federal, provincial and territorial levels to give effect to the provisions of the Convention.

PART ONE: GENERAL INFORMATION

The constitutional structure of Canada — General

2. Canada is a federal state made up of ten provinces and two territories. Pursuant to the *Constitution Act, 1867* and amendments thereto, legislative powers are divided according to subject matter between the federal government and the ten provincial governments. For example, Canada's Constitution gives each province jurisdiction within its territory over the administration of justice, property and civil rights and hospitals. Examples of matters which fall under federal jurisdiction are criminal law and procedure in criminal matters, naturalization and aliens, and a residual power for the peace, order and good government of Canada.
3. Canada also has two territories in which the federal government has jurisdiction to exercise both federal and provincial government powers. However, the federal Parliament has delegated to the territories many of the powers enjoyed by the provincial legislatures.
4. Due to this division of powers, federal, provincial and territorial governments are all involved in the implementation of the provisions of the Convention against Torture. (Because the role of security personnel is especially important for the purposes of this Convention, a detailed explanation is given below on how the federal and provincial governments share responsibility in this area.)
5. In addition, on April 17, 1982, the *Canadian Charter of Rights and Freedoms* was incorporated into the Canadian Constitution by virtue of the *Constitution Act, 1982* (Appendix 1¹). It guarantees a variety of fundamental freedoms and legal rights which were described in Canada's First Report under Part I and Part II, Article 2.

¹ The appendices mentioned in this part are not attached to the report. They will be sent separately as reference material for the attention of members of the Committee against Torture.

International law in Canada

6. In Canada, international treaty law is not automatically part of the law of the land. Rather, the provisions of a treaty must be incorporated into domestic law either by enactment of a statute giving the treaty the force of law, or by amendment of the domestic law, where necessary, to make it consistent with the treaty. The implementation of a treaty whose provisions come under the jurisdiction of one, or the other, or both levels of government, requires the intervention of the Canadian Parliament, the provincial legislatures and often as well, the territorial legislative assemblies.

7. Because the federal Parliament does not have the legislative power to give effect to all the obligations which Canada assumed towards the international community by ratifying the Convention, extended consultations were required between the federal and provincial governments, in which the latter undertook to ensure compliance with those provisions of the Convention falling within their exclusive legislative authority.

Canada's constitutional structure as it relates to security personnel

8. This section explains the constitutional responsibility as between the federal and provincial governments in Canada for security personnel.

The Royal Canadian Mounted Police

9. Responsibility for law enforcement in Canada is shared between the federal and provincial governments. The Royal Canadian Mounted Police (the RCMP), established by the *Royal Canadian Mounted Police Act*, is a federal police force and is authorized to enforce federal laws anywhere in Canada. However, as a federal police force, the RCMP cannot enforce provincial or municipal laws unless clearly authorized to do so by provincial legislation. This is because the provinces are responsible for the enforcement of all laws of general application within their geographical limits. With respect to criminal law, there is an overlap to the extent that the federal and provincial governments may enforce the *Criminal Code* which is federal law.

10. The two territories and all the provinces, except Ontario and Québec (which have established their own provincial police forces) have entered into contractual arrangements with the federal government whereby the RCMP acts as the provincial, and in some instances, municipal police force. In this role, the RCMP enforces provincial law, some municipal by-laws and the *Criminal Code*.

11. However, it is important to note that, as a matter of constitutional law, no provincial authority can intrude into the internal management of the RCMP, which remains with the RCMP Commissioner, who is in turn responsible to the federal Solicitor General. This means that the disciplining of RCMP members, whether they are acting in a federal or provincial policing capacity, is an exclusive federal responsibility.

Correctional services

12. The responsibility for adult corrections is shared by the federal government, the ten provincial governments and the two territorial governments so that Canada has, in effect, thirteen correctional systems. (Juvenile corrections, although governed by the federal *Young Offenders Act*, is administered solely by the provinces and territories.)

13. Under the *Constitution Act, 1867*, the federal government is authorised to establish and administer penitentiaries housing persons sentenced to prison terms of two years or longer. On the other hand, the provinces are responsible for the administration of correctional institutions housing persons sentenced to prison terms of less than two years as well as accused persons who have been refused bail and are awaiting trial.

14. The Correctional Service of Canada (the CSC) is the agency responsible for administering federal sentences (i.e. two years or longer). This responsibility includes both the management of institutions of various security levels and the supervision of offenders under conditional release from the institution.

PART TWO: MEASURES ADOPTED BY THE GOVERNMENT OF CANADA

Article 2

15. Canada's first report outlined a series of constitutional, legislative, regulatory and administrative measures directed at preventing torture. In addition to these provisions, two other developments should be noted. Firstly, section 7(3.71) of the *Criminal Code* (attached as Appendix 2), which came into force on September 16, 1987, makes war crimes and crimes against humanity a criminal offence. Conduct which amounts to torture under the Convention may also constitute a crime against humanity or a war crime, depending on the circumstances, and therefore may also be punishable under this section of the *Criminal Code*. Under section 7(3.74), the defence of obedience to *de facto* authority is taken away.

16. Secondly, the acknowledgement by Canada that victims of armed conflicts should be protected from torture and other cruel treatment, as recognized in the Geneva Conventions of 12 August 1949, was further extended with the ratification by Canada on November 20, 1990 of the Protocols Additional to the Geneva Conventions of 12 August 1949. The commitment of Canada to comply with Additional Protocols I and II extends the protection of persons from torture and other cruel treatment in conflicts of both an international and non-international nature.

Article 3

17. On September 26, 1991, the Supreme Court of Canada determined that the return of two fugitives to the United States where the death penalty is available as a sanction, did not contravene the *Canadian Charter of Rights and Freedoms*. (See *Kindler v. Canada (Minister*

of Justice) and *Ng v. Canada (Minister of Justice)* attached as Appendix 3.) The cases arose because the Canadian Minister of Justice had not sought assurances from the United States, pursuant to section 25 of the *Extradition Act*, that capital punishment not be imposed on the fugitives.

18. The Court held that the law of extradition and its exercise by the Minister was subject to section 7 of the Charter: the right not to be deprived of life, liberty and security of the person except in accordance with the principles of fundamental justice. Moreover, extradition will offend section 7 if the imposition of the penalty by the foreign state would shock the Canadian conscience. The Court noted that torture is a penalty so outrageous to the Canadian community that surrender would always be unacceptable. As regards the availability of capital punishment in a requesting state, each case must be decided on its particular fact situation. In the circumstances presented to the Court, return of the fugitives to the United States did not violate section 7 of the Charter because the accused would be subject to a legal system which was the product of a democratic government and included the substantial protections of a bill of rights. Other considerations were the importance of maintaining effective extradition arrangements with other countries, the risk that Canada could become a safe haven for persons seeking to avoid punishment in the United States and the brutal and shocking nature of the crimes at issue.

19. The Court also held that the law of extradition and the Minister's acts pursuant to that law could not constitute cruel and unusual punishment under section 12 of the Canadian Charter. This was because the punishment to which the fugitives could ultimately be subject was not imposed by the Government of Canada, but by a foreign state. Thus, only section 7 of the Charter could be relied upon to challenge extradition orders.

Article 4

20. At the presentation of Canada's First Report, the Committee specifically enquired as to the legal consequences if a detainee died as a result of the application of force by a correctional officer. In this regard, section 25 of the *Criminal Code* states that if a peace officer (which includes correctional service members), acts on reasonable grounds, he or she may use as much force as necessary in administering or enforcing the law. Necessary force would not, of course, include torture. As well, under section 26 of the Code, "everyone who is authorized by law to use force is criminally responsible for any excess thereof according to the nature and quality of the act that constitutes the excess".

21. The Committee has also asked for statistics about prosecutions for torture under the *Criminal Code* in Canada. The Canadian Centre for Justice Statistics does not have records of convictions for specific offences under the *Criminal Code*. Although it appears that there have not been any prosecutions for torture, it is hard to determine this point definitively as prosecution of criminal offences falls within provincial jurisdiction.

Article 6

22. Canada's first report noted that the Operational Manual of the RCMP was in the process of being updated with respect to stateless persons. The Operational Manual now provides that if a person is stateless, he or she may contact the representative of the country in which he or she normally resides. (RCMP Operational Manual Chapter III.2, Appendix 4.)

Article 8

23. A multilateral agreement to which Canada is a party and which provides for the extradition of individuals for certain offences, operates as a binding arrangement for the purposes of the *Extradition Act*. This is so regardless of whether there is a treaty in force between Canada and the other State Party and regardless of whether the treaty has been expressly promulgated into law. Thus, the Convention Against Torture may be used by Canada as the basis for an extradition to another State Party.

Article 9

24. The *Mutual Legal Assistance in Criminal Matters Act* was proclaimed in force in Canada on October 1, 1988. The Act provides the legal framework for the implementation of treaties between Canada and other states for the purpose of fostering co-operation in the investigation and prosecution of crimes. The Act provides for five basic forms of assistance: (i) the gathering of evidence, including taking statements and testimony; (ii) the execution of search warrants; (iii) the temporary transfer of prisoners for the purpose of testifying or providing other assistance; (iv) the lending of exhibits; and (v) assistance with respect to proceeds of crime.

25. Since 1990, Canada has entered into treaties pursuant to the new Act on mutual legal assistance with the United States, Australia, the Bahamas, the United Kingdom, Mexico, Hong Kong and France. A treaty with the Netherlands came into force on May 1, 1992. Additional treaties with Switzerland, Austria, Portugal, Korea, Brazil and Germany are under negotiation.

Article 10

Royal Canadian Mounted Police

26. Every recruit to the RCMP receives training on the use of force in courses on the "Handling of Prisoners", "Interrogation Techniques", "Firearms Control" and "Criminal Law". The recruits are taught to be constantly aware of the RCMP's policy with respect to the use of force, which is based essentially on two fundamental principles:

- 1) the avoidance of force, if at all possible, in achieving the objectives of law enforcement; and
- 2) restraint, i.e. only as much force as is reasonable and necessary.

27. In response to Canada's ratification of the Convention against Torture and the resulting amendments to the *Criminal Code* creating a specific offence of torture, a session on torture was introduced in the course on "Criminal Law" under the topic of "Arrest, Release and Detention".

28. Recruits also receive training on the *Canadian Charter of Rights and Freedoms*. Particular emphasis is placed on the legal rights provided in sections 7 to 14.

29. As well, in view of the importance of the resolution concerning the "Basic Principles on the Use of Force and Firearms by Law Enforcement Officials", which was adopted by the 8th United Nations Congress on the Prevention of Crime and the Treatment of Offenders in September 1990, and the resolution concerning the "Code of Conduct for Law Enforcement Officials", which was adopted by the United Nations General Assembly in 1979, Canada will publish a booklet containing both instruments, together with a commentary on each of them. The booklet will be distributed to law enforcement officials and interested individuals and organizations, as an important step towards effective implementation of these instruments.

Correctional Service of Canada

30. All employees of the CSC receive orientation and refresher courses dealing with the prohibition of torture and similar acts, including training on the policy and application of the use of force. It is important to note that these courses emphasize CSC's pervasive policy, the duty to act fairly.

31. Employees are instructed on the interpretation and application of those provisions of the *Criminal Code* and of CSC Directives, Standards and Guidelines which relate to the use of force, for example, in the context of courses such as arrest, control and the use of weapons and chemical agents (see CD 605, Appendix 5). As well, they receive training in the interpretation and application of legislation which prohibits torture and other cruel, inhuman or degrading punishment (e.g. the *Canadian Charter of Rights and Freedoms* and the *Canadian Human Rights Act*).

32. The duration of orientation training ranges between one week for staff with no contact with offenders to twelve weeks for correctional officers. Medical officers receive eight weeks training. Refresher courses are offered on a regular basis.

Other

33. The Canadian Centre for Victims of Torture (the CCVT) was established in 1983 to respond to the unique needs of torture victims and their families and to increase public awareness in Canada and abroad of torture and its effects in Canada. The federal government contributes to the funding of the CCVT through the Immigrant Settlement and Adaptation Program and the Settlement Language Program. The numerous activities of the CCVT include the conduct of training programs for visa officers and newly-appointed members of the Immigration and Refugee Board regarding the practice of torture, its effects on its victims and how it is manifested in victims.

Article 13

Royal Canadian Mounted Police

34. An *Act to amend the Royal Canadian Mounted Police Act*, proclaimed in force in 1988, establishes a procedure by which a member of the public may submit a complaint regarding the on-duty conduct of RCMP officers. It also establishes the Public Complaints Commission (PCC) which is independent of the RCMP. The aim of this procedure is to ensure that members of the public will have their complaints fairly and impartially dealt with, and that in examining complaints, the public interest in the fair and proper enforcement of the law will be taken into account. A description of each step of the complaint process is outlined in Appendix 6.

35. The Public Complaints Commission has held five hearings since January of 1990, which dealt primarily with the issue of "excessive force". Four of the hearings dealt with the use of force on arrest and one dealt with the use of force while the complainant was in custody. In three of the cases, the Commission found that, in fact, excessive force had been used. In one case, the Commission concluded that the complaint was unfounded and the other case is still pending. As a result of the Commission's recommendations in these cases, the RCMP has initiated reviews of its policies and training on the use of force in specific areas.

Correctional Service of Canada

36. All inmates have the following rights, in accordance with Commissioner's Directives (CD):

- to access to the grievance procedure of their institution (CD 081, Appendix 7);
- to make complaints to the Correctional investigator (CD 081, Appendix 7, paragraph 38);
- to use privileged correspondence to communicate with designated officials (CD 085, Appendix 8);
- to an opportunity for confidential communication with a lawyer (CD 084, Appendix 9).

37. For a description of the grievances and complaints procedure see pages 10-11 of "Inmate Rights and Responsibilities", attached as Appendix 10.

Article 14

38. During the review of Canada's initial report, the Committee sought clarification on whether a victim is guaranteed compensation in cases where a perpetrator is acquitted due to lack of evidence. Compensation from the provincial criminal injuries compensation boards is

not dependant upon conviction and therefore a victim may still be entitled to compensation where the accused has been acquitted.

39. As regards rehabilitation of victims of torture, reference was made in Article 10 to the Canadian Centre for Victims of Torture (CCVT) located in Toronto. Its activities include a referral service for victims of torture to a specially co-ordinated network of experienced physicians, psychiatrists and other specialists, an English-language training program specially designed for victims of torture and a community support program through a network of volunteers. A report outlining the activities of the CCVT in greater detail is attached as Appendix 11.

40. The Canadian Association for the Survivors of Torture conducts similar programs in Vancouver.

Article 16

41. As indicated in Canada's First Report, the Supreme Court of Canada has found that the protection against cruel and unusual treatment or punishment in section 12 of the Charter is violated by conduct so excessive as to outrage standards of decency. In *R. v. Luxton*, the Court held that a mandatory sentence of life imprisonment with no parole eligibility for 25 years for first degree murder (i.e. planned and deliberate) did not infringe section 12 of the Charter. The mandatory sentence, according to the Court, was deservedly severe reflecting the fact that first degree murder is the most serious crime in the criminal law and encompasses the most serious level of blameworthiness.

42. In *R. v. Goltz*, the Court also held that section 12 was not violated by a mandatory seven-day term of imprisonment for knowingly driving a motor vehicle while prohibited. Factors influencing the Court's conclusion were that the accused had to "knowingly" commit the offence, the need to protect public safety, and the fact that the prior order prohibiting someone from driving was subject to numerous safeguards.

PART THREE: MEASURES ADOPTED BY THE GOVERNMENTS OF THE PROVINCES²

1. NEWFOUNDLAND

43. This submission will update to December 1991 the information contained in Canada's first report.

44. The Division of Youth Corrections, Department of Social Services, has undertaken a major initiative on policy development which is relevant to articles 10, 11 and 13 of the Convention.

² Geographical order, from east to west.

Article 10

45. A number of staff members have been trained to teach a course in non-violent crisis intervention. This course is compulsory for all staff at the residential care facilities for youth. Other supplementary training initiatives are also available. Those that are not mandatory are given broad support by the Division of Youth Corrections and the Department.

Article 11

46. The secure custody facility is being relocated to a modern facility containing such resources as a gymnasium and tennis courts, science and computer labs and autobody and metal working shops which were not previously available for the resident youth.

Article 13

47. The Youth Corrections Policy Manual sets out processes that are triggered where an allegation of abuse or unfair treatment is made by a resident against a staff member or against another resident. If the allegation involves a staff member, that person would be reassigned to duties removed from care of the residents pending an investigation. An internal investigation would always be undertaken. In addition, if the youth is under sixteen years of age, the matter would be referred to Child Welfare for an independent investigation by that Division. Where the investigation raises the possibility of criminal charges, the matter would be referred to the police who would also undertake an independent investigation. Finally, depending on the nature of the allegation, the young person would be assisted in contacting a lawyer, a social worker or an agency such as the Human Rights Commission.

2. PRINCE EDWARD ISLAND

Part I — Information on new measures and new developments relating to the implementation of the Convention

48. Although there is a new *Correctional Services Act* in planning to replace the current *Jails Act*, R.S.P.E.I. 1988, c. J-1, which was referred to in our last report, there are no new developments during the period since Canada's first report, which are relevant to the implementation of the Convention.

49. In Prince Edward Island, correctional officers are expected to have basic correctional officer training and/or related experience before being hired. Correctional officer training is now being offered by the Justice Institute at Holland College in Charlottetown, Prince Edward Island, and includes training on and exposure to material on inmate rights, handling inmates, restraint and the use of force, etc. Upon hiring, the correctional officer is provided with an introductory pre-employment orientation and ongoing on-the-job training is provided.

50. Municipal police hired in Prince Edward Island are now expected to be graduates of the 40-week training program at the Atlantic Police Academy, which includes 15 weeks of

on-the-job training, or they are expected to have the equivalent training acquired elsewhere. Included in this training is the proper use of authority, use of force, prisoner rights and other similar issues.

Part II — Additional information requested by the Committee

51. What follows are statistics on the population of the provincial correctional centres in Prince Edward Island for four years from 1988 to 1991. The initial column provides information with regards to persons on temporary lock-up (police arrestees held prior to court appearances, federal parole violators, immigration detainees). The second column reflects those persons being held in provincial correctional centres on court-ordered remand pending trial. The third column represents those individuals in provincial correctional centres following sentencing by a court. The first number in each column is the number of persons who have been in a provincial correctional centre during that year in the particular category. The second figure is the number of hours that those individuals spent within a provincial correctional centre.

Prison Population

<u>Year</u>	<u>Lock Up</u>	<u>Remand</u>	<u>Sentence</u>
1988	1696/1791	114/2789	1430/26140
1989	1529/1691	127/3096	1301/27920
1990	1750/1776	183/4548	1344/32186
1991	2077/2158	188/5319	1318/31795

52. There have been no prosecutions in Prince Edward Island during the reporting period based on the torture offences introduced in the *Criminal Code*.

3. NOVA SCOTIA

Article 2

53. The procedure for admission to, and care of, patients in mental institutions is governed by the *Hospitals Act*, R.S.N.S. 1989, c. 208.

Article 10

54. With regard to the Correctional Services staff, the Solicitor General's Department provides a mandatory basic training course for all correctional officers as well as specialized training in non-violent crisis intervention, verbal crisis intervention, suicide intervention, staff-offender relations and introduction to corrections law.

Article 11

55. The Solicitor General's Department is in the process of issuing standards to all police departments in the province of Nova Scotia. These, along with relevant policies and procedures, are designed to ensure consistent practice on the part of all police officers in Nova Scotia. A policies and procedures manual issued January 31, 1991 was provided to all correctional centres in the province of Nova Scotia.

Article 13

56. The *Ombudsman Act*, R.S.N.S. 1989, c. 327, provides for any person in custody for a charge or after any conviction of any offense or by any inmate or patient of a mental hospital to complain in private or in writing on any matter.

57. Under the Act, the Ombudsman has legislative authority to investigate any allegation made by any person and to report to the authorities or to the public as seen fit.

58. In 1991, the Ombudsman's office placed an information poster in all correctional centres in the province inviting inmates to contact them with any complaint. Although the number of complaints increased from 30 in 1990 to 52 in 1991, the investigation findings did not show any wrongdoing on the part of the corrections staff.

Article 16

59. Regulations passed pursuant to the *Police Act* set out a procedure by which members of the public may make a formal complaint concerning the actions of a police officer. An appeal may also be made to an independent Police Review Board.

4. NEW BRUNSWICK

60. This report will outline changes made since the initial report and provide additional information regarding New Brunswick's adherence to the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.

61. New Brunswick is committed to the principles of the Convention against Torture and implementing fully its provisions within its jurisdiction.

Article 2

62. Nothing whatsoever in the laws, regulations and policies of New Brunswick justifies the use of torture. No official or agency of New Brunswick is entitled or authorized to use torture or to justify its use.

63. The enforcement of the federal *Criminal Code* is the joint responsibility of the Department of Justice/Attorney General and the Department of the Solicitor General. The

Department of Justice/Attorney General has authority over public prosecutions, government legal services and law reform. The Department of the Solicitor General governs policing and correctional services.

Article 10

64. In May 1991, amendments to the *Police Act*, R.S.N.B. 1973, c. P-9.2, were enacted changing the mandate of the New Brunswick Police Commission. The jurisdiction of the New Brunswick Police Commission is restricted to the following:

- (a) the investigation and determination of complaints by any person relating to the conduct of a member of a municipal police force;
- (b) the investigation and determination of any matter relating to any aspect of policing in New Brunswick; and
- (c) the determination of the adequacy of municipal, regional and Royal Canadian Mounted Police (RCMP) police forces in New Brunswick.

65. Primary authority over policing has been transferred from the New Brunswick Police Commission to the Solicitor General. The functions of the Solicitor General are twofold:

- (a) to promote the preservation of the peace, the prevention of crime, the efficiency of police services and the development of effective policing services; and
- (b) to co-ordinate the work and efforts of municipal and regional police forces and the RCMP, and to discharge the role assigned to the Solicitor General in relation to the RCMP by the terms of the Provincial Policing Agreement between the Government of Canada and the Government of New Brunswick.

66. Under the *Police Act*, the Solicitor General has the authority to issue guidelines and directives to any police force within New Brunswick. Uniform policing standards are currently being developed by the Department of the Solicitor General.

Article 11

67. Section 21 of *Regulation 84-257* of the *Corrections Act*, R.S.N.B. 1973, c. c-26, states that no officer or employee under the Act is permitted to use force against an inmate, except within limited circumstances. In such circumstances, the force used must be "reasonable and not excessive having regard to the nature of the threat posed by the inmate and all other circumstances of the case".

68. Article 11 of the Convention against Torture requires, among other things, that the procedures governing arrests must be made with a view to preventing torture. With this in mind, sections 7 and 10 of the *Canadian Charter of Rights and Freedoms* are applicable to the extent that they outline certain minimum guidelines for arrests. Paragraphs 10(a) and 10(b) of the Charter require that every person upon arrest or detention be informed promptly of the reasons for the arrest or detention and be advised of the right to retain and instruct counsel

without delay. Section 7 of the Charter, which guarantees to everyone the right to life, liberty and security of the person, has been interpreted by the Supreme Court of Canada in the 1990 decision of *R. v. Hebert*, as constitutionalizing the common law right of pre-trial silence. As a result of the Charter, the "police warning" referred to in paragraph 92 of Canada's initial report on the Convention against Torture, is no longer applicable. The following is the warning now given in New Brunswick:

1. NOTICE UPON ARREST

I am arresting you for _____

2. RIGHT TO COUNSEL

Before you say anything, it is my duty to inform you that you have the right to retain and instruct counsel without delay.

Do you understand?

If the lawyer of your choice is not available within a reasonable time or if you cannot afford a lawyer, you have the right to free and immediate advice from Legal Aid duty counsel who is a lawyer.

Do you understand?

What do you want to do about your right to a lawyer?

CAUTION

You need not say anything. You have nothing to hope from any promise or favour and nothing to fear from any threat whether or not you say anything. Anything you do say may be used as evidence.

SECONDARY CAUTION

You must understand that anything said to you previously should not influence you nor make you feel compelled to say anything at this time. Whatever you felt influenced or compelled to say earlier you're not obliged to repeat, nor are you obliged to say anything further, but whatever you do say may be given in evidence. Do you understand what has been said to you?

Article 12

69. The New Brunswick Ombudsman is appointed by the New Brunswick Legislative Assembly and is granted authority under the *Ombudsman Act*, R.S.N.B. 1973, c. O-5, to investigate complaints against administrative decisions and acts of officials of the Government of New Brunswick, including any of its agencies, associations or municipalities. The services of the Ombudsman are offered without charge.

70. The *Police Act* outlines procedures for public complaints to the New Brunswick Police Commission. There are two types of complaints: (a) those which relate to any aspect of policing within New Brunswick [s. 22(1)]; and (b) those which relate to the conduct of a member of a police force, including the police chief [s. 26]. Public complaints concerning the conduct of members of the RCMP are not within the jurisdiction of the New Brunswick Police Commission but rather, within the jurisdiction of the Government of Canada.

Article 14

71. The *Compensation for Victims of Crime Act*, R.S.N.B. 1973, c. C-14, permits the following individuals to make an application for compensation:

(a) where the victim is killed, an application may be made by a person who was responsible for the maintenance of the victim at the time of or at any time after the injury resulting in death, dependants of the victim and persons responsible for the maintenance of the dependants of the victim at the time of or at any time after the injury resulting in death [s. 4(2)]; and

(b) in all other cases, a claim for compensation may be advanced by both the victim and any other person responsible for the maintenance of the victim at the time of or at any time after the injury or loss of or damage to property.

72. Compensation may be awarded for: reasonable expenses incurred or likely to be incurred as a result of the victim's injury or death; pecuniary loss resulting from disability which affects the victim's capacity to work; pecuniary loss to dependants resulting from the victim's death; pain and suffering, where the award is for the benefit of a victim; loss of or damage to property on the victim's person where the award is for the benefit of the victim; and loss of or damage to property, where the loss or damage occurs in one of the following circumstances: during or resulting from lawful arrest or attempted lawful arrest, prevention or attempted prevention of the commission of an offence, or rendering assistance to a peace officer.

73. Applications for an order of compensation under the Act may be made to a judge of the Court of Queen's Bench of New Brunswick or, with the consent of the Solicitor General, to any judge designated by the consent of the Solicitor General.

Article 15

74. In addition to the provisions of the federal *Criminal Code*, which prevents the admissibility of evidence obtained as a result of the use of torture, the policies and guidelines of New Brunswick provide that every person shall be read the warning outline under Article 11.

Article 16

75. The Corrections Branch of the Department of the Solicitor General has conducted an extensive review of its institutional policies and procedures with the intent of examining the

fundamental rights and freedoms retained by inmates (voting rights, association and expression rights and the freedom of religion) and the fairness of internal decision-making procedures (search and seizure, administrative segregation, inmate transfers and disciplinary procedures). As a result of this review, amendments are forthcoming to the internal administrative policies and directives of the Department of the Solicitor General and to the *Corrections Act*, R.S.N.B. 1973, c. C-26, and *General Regulation - Corrections Act*.

76. The *Human Rights Act*, R.S.N.B., c. H-11, protects employees against prescribed forms of discrimination including sexual harassment.

77. The *Family Services Act*, R.S.N.B. 1973, c. F-2.2(1980), outlines a comprehensive regime for the protection of children. All aspects of the welfare of children are provided for in the Act and include the mental, emotional and physical health of a child, a secure environment for a child, the protection of a child's cultural and religious heritage and a recognition of a child's views and preferences.

ATTACHED DOCUMENTS³

Compensation for Victims of Crime Act, R.S.N.B. 1973, c. C-14 and Regulation 83-86

Corrections Act, R.S.N.B. 1973, c. C-26 and Regulation 84-257

Excerpts from An Act Respecting the Provincial Offences Procedure Act, Chapter 22, Assented to June 20, 1990:

- Amendments to the Corrections Act
- Amendment to the Habeas Corpus Act

Habeas Corpus Act, R.S.N.B. 1973, c. H-1 and Regulation 84-62

An Act to Amend the Habeas Corpus Act, c. 25, June 16, 1977

Ombudsman Act, R.S.N.B. 1973, c. O-5

Know Your Ombudsman (pamphlet)

Police Act, R.S.N.B. 1973, c. P-9.2, amendments, and Regulations 81-18, 86-49, 86-76 and 91-119

Annual Report 1990-1991, New Brunswick Police Commission

³ These documents are submitted separately as reference material.

5. QUÉBEC

78. The Government of Québec has undertaken to comply with the provisions of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* with the adoption, on June 10, 1987, of decree no 912-87, in compliance with its internal law.

79. This report updates to December 31, 1991 the information contained in the Initial Report of Canada on the application of the said Convention.

80. According to Québec's *Charter of Human Rights and Freedoms*, enacted by the National Assembly in 1975, "Every human being has a right to life, and to personal security, inviolability and freedom". Legislative and administrative measures have been taken on the basis of this fundamental provision to ensure compliance with the provisions of the Convention in legislative matters.

LEGISLATION

81. Québec's legislation contains no provisions that might be considered inconsistent with the fundamental rights enshrined in the Convention.

82. In civil matters, Québec has carried out a major reform of its legislation which led to the *Civil Code of Québec*, S.Q. 1991, c. 64, being assented to on December 18, 1991. Article 2858 of this Code contains a new rule of evidence: "The Court shall, even of its own motion, reject any evidence obtained under such circumstances that fundamental rights and freedoms are breached and that its use would tend to bring the administration of justice into disrepute." This provision will have the dual effect of promoting the aims of the Convention while ensuring that the right to the integrity of the person cannot be infringed because the law is silent.

83. It should be noted that in criminal matters, article 61 of the *Code of Penal Procedure* (R.S.Q., c. C-25.1) provides that "The rules of evidence in criminal matters, including the *Canada Evidence Act*, R.S.C. 1985, c. C-5, apply..." This provision came into force on October 1, 1990. Under article 231 of this Code, which came into force at the same time, except as otherwise prescribed in the Code and except in the case of contempt of court, imprisonment cannot be prescribed for offences under the statutes of Québec.

CORRECTIONAL SYSTEM

84. In 1990-91, 74,465 entries were registered in the Québec's detention facilities system. Of this number, 52,956 were admissions and 21,509 were transfers. Thus, the average daily registered population was 4133.9 people, or 1223.2 accused and 2910.7 inmates.

85. The staff of the detention facilities system is given a comprehensive training, centred on respect for individuals and their rights. No accusations have been made so far against staff members working in the system in terms of the *Criminal Code*'s provisions on torture.

86. Each facility has a system for processing any complaints that might arise, which can, if necessary, result in the intervention of the Detention Branch of the Department of Public Security. Incarcerated persons may also lay a complaint with the Ombudsman (Protecteur du citoyen) or with the Québec Human Rights Commission. These remedies in no way preclude their appealing to the regular courts if they believe their rights have been infringed.

POLICE

87. A major police reform launched in December 1988 in Québec resulted in the adoption of a uniform code of conduct for all police and in the creation of two new separate tribunals to ensure compliance with the Code: the commissioner for police ethics and the committee on police ethics. This reform became effective on September 1, 1990.

88. The police code of ethics applies to all police officers in Québec, with the exception of members of the Royal Canadian Mounted Police working in Québec, who come under the Canadian federal government. This code seeks to ensure better protection for the citizen by encouraging police officers to develop high standards of service to the public and conscientiousness in the performance of their duties while respecting individuals' rights and freedoms. It sets out the duties and standards of conduct that the police are to follow in their relations with the public.

89. In the past, citizens who considered that they had suffered from police conduct could address their complaints to the appropriate police force or to the Québec Police Commission, but now only the commissioner for police ethics is authorized to receive such complaints. The complainant and the police officer involved, and his/her superior, are kept informed of the progress of the complaint. If the complaint is dismissed, the complainant can ask to have that decision reviewed by the committee on police ethics. Depending on the gravity of the act complained of, the commissioner can also summon the police officer to appear before the committee on police ethics or hand the case over to the Attorney General to assess the advisability of a criminal prosecution.

90. The Committee on police ethics, composed of a chairperson and three vice-chairpersons, all of whom are lawyers with at least ten years at the Bar, have jurisdiction to dispose of any case brought by the commissioner and any request for review made by the complainant. The committee, whose hearings are, with some exceptions, public, is generally composed of a three-member panel consisting of a lawyer, a police officer and a person who is neither a lawyer nor a police officer. Any final decision by the committee may be appealed to one of Québec's regular courts. The decision of the judge of that court is final and cannot be appealed or submitted to arbitration.

91. In addition, the Department of Public Security has adopted a policy for police investigations in cases involving a police officer or a police force. According to this policy, when a person dies in the course of some police action, the investigation is entrusted to a police force other than the one involved.

92. Training of police officers in Québec takes place at the Police Institute. During their training at the Institute, all trainees are evaluated on their skills and ability to put into practice their professional knowledge while respecting fundamental human rights, at all stages of the actions undertaken by the police: arrest, detention, imprisonment, search and investigation.

93. Also, the training given by the Institute in the use of force is based on the practical and technical aspects of police intervention in the legislative and regulatory context in keeping with the legal guarantees enshrined in the Canadian and Québec Charters of Rights.

94. Since the publication of the initial report, a complementary administrative measure has been adopted. The police are regularly informed of the techniques and the legal restrictions on the use of force and of the responsibilities of peace officers.

6. ONTARIO

95. The Government of Ontario, having continued to review its legislation, programs, policies and practices since Canada's first report, is satisfied that they continue to be in compliance with the Convention. The information provided here is an update to the first report.

Part I — New measures and developments

Article 2

96. The *Police Services Act* of Ontario was proclaimed in force in 1990. The Act governs all police forces in Ontario. Among the principles declared in the Act are the need to ensure the safety and security of all persons in Ontario and the need to safeguard the fundamental rights guaranteed by the *Canadian Charter of Rights and Freedoms* and Ontario's *Human Rights Code, 1981*.

97. The employees of the Ministry of Correctional Services are subject to the provisions of the *Criminal Code* which deal with the use of force in the administration of their duties.

Article 10

98. Staff in the Young Offender residential system of the Ministry of Community and Social Services receive training in crisis intervention and in the prevention and management of aggressive behaviour.

Article 11

99. A major initiative of the Ministry of the Solicitor General has been the development of standards or guidelines governing police practices.

100. These standards and guidelines specify, *inter alia*, that when persons are in police custody:

- (a) all accommodation must be adequately monitored, safe, secure, adequately heated, lit and ventilated, equipped with a bunk and sanitary toilet facilities;
- (b) immediate medical attention must be obtained for unconscious prisoners or prisoners who appear ill or injured and in obvious need of medical assistance (Special care is exercised with prisoners who are known to be or suspected of being mentally ill or suicidal. Prisoners are fed at regular meal times.);
- (c) they have the basic rights to retain a lawyer and privacy to discuss their case with a lawyer;
- (d) searches are conducted with due consideration to possible embarrassment of the subject of the search and, under normal circumstances, persons are searched by an officer of the same sex.

101. The Ministry of Correctional Services is continually reviewing and updating policies and procedures relating to the treatment of adult inmates and young persons. The Ministry provides custody and detention facilities for 16- and 17-year old young people. These correctional facilities are closely monitored by the Ministry.

102. All young persons detained or in custody in facilities of the Ministry of Community and Social Services are advised of the existence and functions of the Office of Child and Family Services Advocacy and of their right to communicate with the Office in confidence.

103. In 1990, that Ministry reviewed all existing safeguards for children in residential care. A report containing 65 recommendations is now being used to ensure the safety of resident children and youth.

Article 12

104. Under the guidelines established by the Ministry of the Solicitor General, the Chief of Police/Commissioner of the Ontario Provincial Police examines every instance where force has been used. Further, a Special Investigations Unit, created pursuant to the *Police Services Act*, investigates incidents involving police where a serious injury or death has occurred that may have resulted from criminal offences committed by police officers. Following the investigation, the Director of the Unit determines whether there are reasonable and probable grounds to lay a criminal charge. If a charge is laid, it is dealt with by the criminal courts in the usual manner.

105. The Ministry of Correctional Services has a mechanism for the formal investigation of situations involving the use of force.

106. The Ministry of Community and Social Services staff must report any suspicion that a child is, or may be, suffering abuse, including children in the Ministry's Young Offenders residential facilities.

Article 13

107. The new *Police Services Act* contains measures for civilian involvement in both the complaints and investigations process. One such measure is the establishment of a public complaints system headed by a civilian complaints commissioner and administered by the Ministry of the Attorney General.

108. A complaints procedure exists for young persons in residential programs operated by the Ministry of Correctional Services.

Article 16

109. As a result of the 1991 Ontario Court of Appeal decision in *Flemming v. Reid & Gallagher*, there can no longer be involuntary treatment if the patient refused treatment when he or she was competent.

110. The *Ministry of Correctional Services Act* prohibits corporal punishment of any child receiving services under that Act.

111. A psychiatric patient who is over 16 and incompetent has the right to apply to a Review Board in order to have a representative appointed to make treatment decisions. The *Mental Health Act* contains provisions which outline when restraint may be applied, and the circumstances must be documented on the clinical record. All provincial psychiatric hospitals have policies respecting the reporting of allegations of patient abuse. Psychiatric patients in provincial psychiatric hospitals have access to a patient advocate who may pursue any complaint or concern brought forward by a patient.

Part II — Additional information requested by the Committee

112. Concerning the issue of the training of medical personnel to deal with incidents of mistreatment and torture within institutions governed by the Ministry of Correctional Services, medical personnel familiarize themselves with the policies and procedures of the Ministry. When required, medical staff administer immediate medical intervention to inmates. When appropriate, medical staff report injuries and ailments to the superintendent and/or the Senior Medical Consultant for the Ministry.

113. Within the Ministry of Health, all psychiatric hospitals have policies respecting the reporting of allegations of patient abuse. Staff of the institutions are expected to familiarize themselves with the policies and procedures, and are required to report allegations of incidents to their immediate supervisor who will take the necessary steps to respond to the allegation.

114. Concerning the issue of compensation for victims, section 5 of the *Compensation for Victims of Crime Act* of Ontario provides for compensation when the victim has been injured or killed as a result of a criminal act of violence in Ontario.

7. MANITOBA

Article 2

115. Manitoba Justice is now responsible for the administration of the *Criminal Code* (including provisions against torture) in Manitoba, as well as the administration of *The Corrections Act*.

116. *The Corrections Act* has been re-enacted as R.S.M. 1988, c. C230. Section 34 now authorizes the superintendent of a correctional institution to make rules respecting conduct, and section 36 authorizes regulations respecting the conduct and duties of officers/employees of correctional institutions, training for such staff, and the general welfare and care of inmates. Policies are in place on the use of force by staff.

117. Youth custody institutions have policies on use of force by staff, physical and sexual abuse reporting, access for grievances by residents of youth custody facilities, reporting of incidents of use of force, and other issues related to cruel, inhuman, or degrading treatment or punishment. Open custody homes located in the community are licensed by the Minister of Justice and must meet prescribed conditions, including the operator's personal compatibility with the appropriate treatment of youth.

Article 10

118. Persons involved in the custody, interrogation or treatment of individuals subject to arrest, detention or imprisonment continue to be provided with general information regarding the obligations arising from their duties, in the context of this Convention. Youth custody staff are trained in crisis prevention and the use of non-physical as well as physical restraint techniques. Adult Corrections has staff training courses in dynamic security, conflict resolution and positive discipline.

Article 11

119. Both Adult Corrections and Community and Youth Corrections conduct comprehensive regular operational reviews of policy and practice in their operational units. Evaluative reports coming from these reviews contribute to strategic planning.

Article 12

120. Inquiries are required under section 7(5) of *The Fatality Inquiries Act*, S.M. 1989-90, c. 30(F52) where a person died while in the custody of a peace officer, or while a resident of a correctional institution, jail, prison, military guardroom or in an institution to which *The*

Mental Health Act applies, or in unexplained or unexpected circumstances. Where warranted, full investigation and report shall follow an inquiry. Under section 19(3), where as a result of an investigation there are reasonable grounds to believe that there was a violent, negligent or unexplained death of an inmate in a correctional facility or an involuntary resident of a mental institution, or that a person died at the hands of a peace officer, the Chief Medical Examiner is required to direct a Provincial Judge to hold an inquest.

121. Adult Corrections routinely completes follow-up investigations of all unusual incidents (suicide, disturbances, etc.) in order to determine the facts and make recommendations regarding policy change and/or disciplinary action where warranted. Community and Youth Corrections has a protocol for a referral of allegations of physical or sexual abuse to investigative authorities. Each new staff, prior to recruitment, is investigated for suitability of personal background.

Article 13

122. Adult correctional facilities allow direct access, by mail/phone to the provincial Ombudsman, the Human Rights Commission, and the local media. Youth custody facilities' policy is to provide direct and unmonitored access by mail/telephone to the Ombudsman or the facility head, for any resident.

123. Section 15 of *The Ombudsman Act*, R.S.M. 1987, c. 045, permits the Ombudsman to investigate any act done or omitted relating to a matter of administration by a department or agency of government. This would permit persons in provincial jails and provincial institutions to make complaints to this official. The Ombudsman can also initiate his own inquiries. However, investigation is discretionary, and the Ombudsman's only remedial powers are to file reports and to make recommendations.

124. Under new provisions in *The Mental Health Act*, R.S.M., c. M110, a person admitted to psychiatric facilities must be informed: (a) where the person is being detained; (b) the reason for the detention; and (c) that the person has the right to retain and instruct counsel. Additionally, the person must be provided with a written communication outlining the functions of the review board, the manner in which an appeal can be referred to the board, and the right to send and receive mail, retain and instruct counsel, etc.

Article 14

125. On August 30, 1989, the schedules to *The Criminal Injuries Compensation Act*, R.S.M. 1987, c. C305, were amended by Order in Council 219/89 specifically to include the crimes of torture and illegal confinement as compensable offences. Compensation comes from government funds. Although no claims of such a nature have been made to date, if such an application was received, the victim would be provided the same entitlement to benefits as any other qualified victim.

126. *The Justice for Victims of Crime Act*, S.M. 1986-87, c. 280 (J40) establishes a Victims Assistance Committee to promote, among other things, provision of services for victims of

crime (including torture). There is also established a Victims Assistance Fund, from which Cabinet may authorize expenditures for the promotion and delivery of victims' services and research into victims' services, needs and concerns. The fund is not used to provide direct compensation to individual victims of crime.

Article 16

127. *The Human Rights Code* provides a means of recourse to any individual who has been subjected to unreasonable discrimination (including harassment) based on group characteristics such as race, religion, political belief, etc. In addition, provincial authorities are subject to Court review of their conduct, in the context of section 12 of the Charter, which prohibits cruel and unusual treatment or punishment. For example, in *R. v. Sawchuk* (unreported, June 24, 1991), the Manitoba Court of Appeal rejected an allegation that the pre-trial detention of a 23 year-old accused person who had the mental age of a 12-year-old amounted, under all the circumstances, to a violation of section 12.

128. Recent amendments to the *Criminal Code* have replaced the Lieutenant Governor's Advisory Board of Review with a Review Board, with the authority to review and make decisions with respect to mentally disordered offenders involved with the criminal law. The criteria considered are the need to protect the public from dangerous persons, the mental condition of the accused, the reintegration of the accused into society and the other needs of the accused.

8. SASKATCHEWAN

129. This report updates to January 1, 1992 the information contained in Canada's initial report on the Convention relative to Saskatchewan.

Article 13

(1) Complaints against police

130. *The Police Act, 1990* was proclaimed on January 1, 1991, replacing the existing *Police Act*. The Act puts into place new provisions for the handling of public complaints against members of the police force. An independent civilian investigator has been appointed whose duty is to inform, advise and assist complainants and to monitor and oversee the handling of public complaints. The investigation process must be conducted in a manner "consistent with the public interest", and is in addition to any civil or criminal proceedings which may be taken against a member of the police force.

131. Once the investigator has completed the investigation of the complaint, he or she shall provide the police chief with a written report and, where the investigator considers it advisable, may make the report available to the Chairperson of the Police Commission. The Act also provides for the informal resolution of public complaints, with the consent of the complainant.

132. Where warranted, the matter is referred to the Attorney General for prosecution or to the Police Commission for disciplinary action.

133. Where the investigation leads to disciplinary action, the Act provides for the suspension of the officer pending a disciplinary hearing. A hearing is held before a hearing officer designated by the Minister of Justice. The complainant is given notice of the hearing and the hearing is held in private unless the officer, the investigator, the complainant and the person prosecuting the complaint agree otherwise.

134. The penalties for disciplinary offences include: dismissal, demotion, suspension with or without pay, a fine up to \$1000, a period of probation or close supervision, an order requiring the officer to undergo counselling, treatment or training, a reprimand or any other order the hearing officer deems fit.

135. An appeal of the hearing officer's order can be made, with permission, to the Police Commission.

(2) Young offenders in custody

136. The Department of Social Services, Young Offenders Branch, has a policy of requiring that lawyers/Ombudsman/investigators be given reasonable access to their young offender clients when requested. In addition, all young offenders are made aware of, and provided access to, legal aid services that are available. With certain restrictions, residents of custody facilities are given regular access to their immediate family and to others significant in their lives, subject to the approval of a unit supervisor. Telephone access to legal counsel, the Ombudsman and the police are given as requested during reasonable hours of the day.

137. In secure custody facilities, it is sometimes necessary to place a young offender under some form of physical restraint. Such restraints are routinely used to ensure safe escorts of high security residents outside secure areas of the institution and in the community. They may also be used in certain situations for purposes of internal security. However, this measure is subject to strict regulation and control. Physical restraints are not used on residents held in open custody.

138. Incidents involving an apparent or alleged assault of a young offender by a resident or staff are immediately reviewed by the custody facility director and, depending upon the outcome of this review, may be referred to police for investigation. Police referrals are mandatory whenever the alleged assault victims specifically request it. The facility director will refer a case on his/her own initiative when there are reasonable or probable grounds to believe a criminal assault may have occurred.

(3) Children in the care of the Province

139. *The Child and Family Services Act* requires that the Minister of Social Services be responsible for the expense of sheltering, supporting, educating and caring for children found to be in need of protection, during the period of custody or committal. In the case of children

in the care of the Minister, the Regional Director shall notify the Executive Director, Family Services Division, of a serious case incident within 24 hours of the incident to be followed by a written report. Serious case incidents include but are not limited to:

- (a) the death of a child;
- (b) the serious injury of a child; and
- (c) allegations of sexual abuse of a child.

140. All complaints concerning abuse or neglect of children in care are to be investigated immediately and if the complaint includes information that an assault may have taken place, the matter is referred to the police for joint investigation.

Article 16

(1) Health care

141. Within the health field in Saskatchewan a number of legislated and policy requirements have been established which have the effect of ensuring that persons receiving health care are not subjected to cruel, inhuman or degrading treatment or punishment.

142. Regulations under *The Hospital Standards Act* stipulate that consent to surgery must be obtained from a patient by a hospital board before surgery can be carried out. As a general policy, hospital boards customarily obtain a general "consent to treatment" from all patients admitted to their facilities.

143. Section 25 of *The Mental Health Services Act* prohibits a physician or other person from administering psycho-surgery or experimental treatment to a patient admitted involuntarily to a mental health treatment facility. Other sections of the Act insure that mentally disordered persons who are involuntarily admitted, or their nearest relatives, are informed of their right to appeal the involuntary detention to a review panel or a court. In addition, all voluntary patients have access to independent advocacy services if they feel they are being unfairly treated. A policy of the Health Department's Home Care Branch requires that home care boards should ensure that the rights of patients are respected, that confidentiality of patient's records is maintained and that clients are aware of their right to appeal decisions about the services provided.

144. Program guidelines for special care homes in Saskatchewan state that residents are to receive considerate and respectful treatment and that residents are to receive protection from injury from any source to the extent that such injury can be anticipated. *The Personal Care Home Regulations* provide that every resident is to be free from any actions of a punitive nature, including physical punishment, threats of any kind, intimidation, verbal, mental or emotional abuse or confinement.

145. Guidelines have been established by the Medical Research Council of Canada to assist researchers and health care institutions in making ethical decisions about research activities involving human subjects. These guidelines deal with principles of informed consent,

evaluations of risk and benefit, confidentiality of information and the implementation of ethical responsibilities.

146. Codes of ethics have been established by professional associations of physicians, nurses, psychologists and social workers to guide such professions in their relationships with patients or clients. Such codes customarily oblige professionals to respect the dignity and decision-making authority of their patients/clients and to avoid unnecessary harm or injury.

(2) Corrections

147. The Corrections Division of the Department of Justice has initiated several new policies with respect to the treatment of inmates in provincial correctional centres. One of those is a policy which limits the release of an inmate's personal information. The benefits of and the right to leisure time activities for inmates is now formally recognized by the enunciation of principles and standards. The Corrections Division has also instituted guidelines for ensuring the provision of needs for persons with disabilities. This new policy seeks to ensure that the needs of inmates with disabilities are adequately met.

9. ALBERTA

Part I(a) (i) and (ii) — Article 16

148. A new policy has been introduced by the Department of Family and Social Services related to article 16. Under the new policy, corporal punishment of foster children will be completely prohibited by January 1, 1993. An interim policy will significantly restrict the use of corporal punishment of foster children under the protective care of the Department. The interim policy stipulates the limited circumstances in which corporal punishment may be used, and requires all incidents to be documented. The policy also requires foster parents to receive training in alternative disciplinary methods.

Part I(b) (i) — Articles 11, 12 and 13 and 16

149. A new *Mental Health Act* came into effect in 1990 which allows detention for examination and treatment of involuntary patients. However, the Act also sets up a system which requires the completion of admission and renewal certificates to hold a person. The longest time period for which a person can be held is six months, which requires a renewal certificate signed by two physicians, one of which must be a psychiatrist.

150. All involuntary patients must be informed of the reason they are being held and of their right to apply to a review panel for cancellation of a certificate. This information must also be given to the patient's guardian, nearest relative or other person designated by the patient.

151. The board of the facility must provide an interpreter if required and must assist the patient with the submission of an application to a review panel. The board or staff of a facility is not allowed to interfere with written communications to or from a patient.

152. The following two references are not new legislative developments but should have been included in the first report.

153. The *Public Health Act* allows for the detention of a person suspected of having a communicable disease for the purposes of examination and investigation. The person may only be held for 24 hours, unless an application to court is made to increase the time for not more than two periods of seven days each.

154. If a person is infected with certain communicable diseases (as defined in regulation) and refuses to comply with a physician's orders, the Medical Officer of Health may issue a certificate for the apprehension, detention and treatment of the person. However, the individual must be examined within 24 hours, informed of the reasons for his detention and be advised of his legal right to obtain counsel. The person must be released within seven days unless an isolation order is issued.

155. An isolation order requires the certification of two physicians, or one physician with a laboratory report as evidence, that the individual is infected with a certain disease and fails to comply with medical orders. The same information must be provided to persons under an isolation order as to those under a certificate.

156. Persons detained under a certificate or an isolation order can apply to the Court of Queen's Bench for cancellation of the certificate order.

157. The Solicitor General Department administers the *Police Act*, S.A. 1988, c. P-12.01, which sets out a complaint mechanism under Part V for the public. A complaint respecting a police service or a police officer may be laid which can proceed to the Law Enforcement Review Board, an independent tribunal which determines the validity of the complaint. If it is determined during the course of the complaint process that a criminal offence has occurred, the matter must be referred to the Attorney General to determine whether charges should be laid.

Part A(b) (ii)

158. There has been no new case law relevant to the implementation of the Convention.

Part A(b) (iii)

159. During 1990, the Law Enforcement Review Board disposed of 43 cases, none of which involved criminal offenses.

Part A(b) (iv)

160. No comment.

Part II — Information requested by the Committee during its consideration of Canada's first report

161. Statistics related to the number of state officials prosecuted for committing or authorizing acts of torture, or cruel, inhuman or degrading treatment or punishment are not available.

162. As part of their basic training program, correctional officers receive one day of training on human rights and limits to the use of force. Police officers receive up to two weeks training on the use of force and a half day of training on human rights.

10. BRITISH COLUMBIA

The role of the provincial Ombudsman

163. As well as specific legislation and administrative measures carried out by individual ministries, the intent of this Convention is addressed in a comprehensive manner through the Office of the Ombudsman. Under the terms of the *Ombudsman Act*, R.S.B.C. 1979, c. 306, this agency investigates complaints by members of the public against public officials.

164. The Office of the Ombudsman deals with complaints from adult and youth correction centres and adult and youth mental treatment centres. To facilitate access to the Office by inmates of correctional or mental institutions, regular visits are made to these institutions. The attached extracts from the Ombudsman's annual report⁴ document a number of cases related to alleged inmate or client abuse.

165. The Ombudsman also carries out studies of particular areas of the provincial government to ensure that procedures are organized to effectively respond to public concerns. A study was completed in 1986 with regard to police complaint procedures to clarify who should investigate and rule on public complaints against police officers. Revisions to the *Police Act* were passed in 1989 to ensure that an impartial authority, the Police Commission, had jurisdiction to investigate and resolve complaints from citizens.

Article 2: Legislative ... or other measures

166. The Ministry of Attorney General is responsible for enforcement of provincial statutory provisions and prosecution of offences under the *Criminal Code* of Canada. No provision in B.C. law or policy may be invoked as a justification for torture or other inhuman treatment. Specific legislation, policies and procedures are referenced below by program area.

⁴ These documents are submitted separately as reference material for the attention of the members of the Committee against Torture.

167. For police officers, standards of conduct are regulated by the *Police Act*, R.S.B.C. 1979 c. 331, as well as by a Discipline Code, included in Appendix A of B.C. Reg. 330/75 *Police (Discipline) Regulations*. Section 7(b) of the Code lists the following action as being subject to discipline: "any unnecessary violence to any prisoner or other person with whom he may be brought into contact in the execution of his duty".

168. For correction officers charged with custody of offenders, conduct is regulated by: the *Correction Act*, R.S.B.C. 1979, c. 70; a mission document entitled *Beliefs, Goals and Strategies* (B.C. Corrections Branch, Ministry of Attorney General, rev. May 1986); and specific procedures set out in the *Correctional Centre Rules and Regulations*, 1986. The latter rules and regulations specify in section 11 that physical restraint may only be used to prevent the inmate from injuring himself or others, in transporting inmates, or in preventing escapes, and use of restraining devices other than handcuffs or leg irons must be reported to superiors. Section 22 requires that searches are to be conducted with a minimum of force. Sections 35, 36, 37 and 38 outlines rules related to use of segregation cells, including an inmate's right to meals, exercise, and medical supervision.

169. The province's major long-stay in-patient facility for people with mental illness, Riverview Hospital, has a number of policies and procedures relating to the reporting and investigation of patient abuse. Policy number CR1-015 outlines the reporting and investigation of patient abuse and the right of the provincial Ombudsman to investigate charges of abuse and gain access to any records needed in the course of such an investigation.

170. Under the *Coroner's Act*, R.S.B.C. 1979 c. 68, a coroner is directed in section 10 to investigate all deaths which take place in a penitentiary, prison or while in the custody of a peace officer. Under section 52, a coroner may authorize a post mortem of any death in a hospital or institution at the request of the board of directors of that institution.

Article 10: Training of public officials

171. Training of police and correction officers is delivered by the Justice Institute in Vancouver, which reports to the Ministry of Attorney General. To supplement its core curriculum, the Institute has established a family assault and sexual violence training centre which focuses on the criminal justice aspects of this type of violence, with an emphasis on intervention and prevention.

Article 11: Interrogation rules and custody arrangements

172. Adequate protection for inmates of correctional centres is mandated by Part 2 of the document *Beliefs, Goals and Strategies*. It states in section 1 that "all persons must have their rights respected and be treated with dignity", and in section 12 that "offenders are members of society and are to be treated with respect and dignity and are not to be subjected to cruel and unusual forms of treatment". More detailed rules regarding treatment of inmates are provided in the *Correctional Centre Rules and Regulations*, which are currently under revision.

Articles 12 and 13: Complaints and investigation

173. For inmates of a provincial correctional centre, a grievance procedure is provided in section 40 of the *Correctional Centre Rules and Regulations*. Inmates can complain to specified officials, and also to the provincial Ombudsman. All such correspondence is considered to be private.

174. For mental patients at Riverview Hospital, a complaint can be made to any staff member or to a representative of the provincial Ombudsman's office, who visits Riverview Hospital on a weekly basis. An investigation must take place immediately, with a report completed within 48 hours. All significant allegations of abuse are to be referred by the Chief Executive Officer of the facility to an independent panel of inquiry appointed by the Minister of Health for possible further investigation. If the complaint is made directly to the Ombudsman's representative, that individual is to have access to all records required to make a full investigation. A volunteer support person can be made available to the patient who suffered the alleged abuse.

175. With regard to the Forensic Psychiatric Institute, where patients are held by court order ("some patients are held for less than 60 days while being assessed for the court; others, declared unfit to stand trial, remain until considered fit; still others remain until they are considered able to function safely in a community setting" - *Ombudsman 1990 Annual Report*), there is a Patients' Concerns Committee consisting of three staff members who play an important role in addressing patient issues.

176. For members of the public, a complaint of abuse against a police officer can be made to the Chief Constable of the particular police force. Amendments to the *Police Act* passed in 1989 created a new avenue of complaint, to a new Complaints Commissioner, who is employed by the B.C. Police Commission.

177. For refugees, Mental Health Services of the Ministry of Health has provided clinic and rehabilitation services to refugees who have been victims of torture including refugees from Chile and El Salvador.

Article 14: Redress for victim

178. The Ministry of Attorney General is responsible for the *Criminal Injury Compensation Act*, R.S.B.C. 1979, which provides for compensation to victims for a variety of criminal offences. The Schedule to the Act provides a list of these offences, which include assault, assault with a weapon causing bodily harm, aggravated assault, unlawfully causing bodily harm, kidnapping, illegal confinement, and intimidation. In compliance with the Convention, this Schedule will be reviewed to ensure that it can cover all forms of abuse contemplated by the Convention. Adjudication of claims under the Act is carried out by the Workers' Compensation Board. In 1990, a total of 3,957 applications were filed, with awards made in 2,637 cases and over \$11 million awarded.

179. In addition to the remedies under the *Criminal Code*, civil remedies are also available to victims of torture.

Article 15: Admissibility of evidence

180. The inadmissibility of evidence obtained by coercion or made as a result of torture is established by case law pursuant to the *Evidence Act*, R.S.B.C. 1979, c. 116.

Article 16: Other acts of cruel, inhuman or degrading treatment

181. The sexual harassment of an employee is not acceptable in British Columbia. Complaints of this nature are accepted under the *Human Rights Act*, S.B.C. 1984, c. 22. Many of the individual ministries of the British Columbia Government also have specific policies prohibiting such harassment of employees by other staff members.

182. Approximately 18.2 percent of cases accepted by the B.C. Council of Human Rights in the fiscal year 1990/91 concerned sexual harassment. In a majority of cases referred to hearing, the Council has ordered payment to the complainant of the maximum \$2,000 for humiliation, embarrassment, and injury to self-esteem.

183. In recent years, there has been considerable public concern about incidents of sexual abuse of children by teachers, social workers and other individuals in positions of the trust of children. The government now has a comprehensive policy for criminal records screening, which is undertaken for all individuals applying for positions in the provincial government and/or publicly funded agencies where they would be working with children. The intent of the screening is to identify those who may have abused children previously, and prohibit them from taking such positions.

184. In 1987, the Ministry of Attorney General established a new Victim Assistance Program to provide services to victims of crime. This is a very comprehensive initiative with over 100 programs. The services provided include practical assistance at the scene of the crime, help with filling out forms, emotional support, transportation to and from court, and basic information about the progress of their case, recovery of their property and other administrative details. A toll-free information line is available as well as a victim reparation program. The program is delivered by civilian staff and volunteers attached to local police forces, as well as by staff in sexual assault support centres.

PART FOUR: MEASURES ADOPTED BY THE GOVERNMENTS OF THE TERRITORIES

1. NORTHWEST TERRITORIES

Article 2

185. The operations manual of the Northwest Territories Corrections Service sets out directives which reflect the philosophy of the *Corrections Act*. The manual states that the

philosophy of Corrections Service is based on the belief that all human beings have fundamental rights and freedoms which cannot be affected by race, origin, colour, religion, sex, sexual preference or language. Inmates have the same rights as any other member of society, except for those that are removed by the fact of incarceration. Arbitrary treatment of inmates and lack of respect for their human rights lead to legal liability.

Article 11

186. The *Corrections Act* sets out certain measures to guarantee the rights of inmates.

187. On admission to a correctional centre, every inmate must be provided with full information concerning the rules governing the treatment of inmates and any other information of which the inmate should have knowledge. This must include rules on earnings and privileges of inmates, the making of complaints by inmates, and discipline.

188. The Act stipulates that discipline and order must be maintained in a correctional centre, but with no more restriction than is required for that purpose.

189. The Act also specifies that no employee shall use force unnecessarily with inmates, and, when the application of force to an inmate is required, use more force than is reasonably necessary.

190. Included among the rights guaranteed to inmates under the Act are the right to send a letter or otherwise communicate with people outside the correctional centre, the right to receive visits, and the right to communicate with counsel without the mail being inspected.

191. According to the Corrections Service operations manual, inmates must be informed of their right to refuse medical treatment. When force is necessary, it must only be used to the minimum degree required to control the situation. A limited number of cases is mentioned in which force can be used. The manual stipulates that an inmate can be physically restrained only as a control measure, never as punishment. Inmates may be restrained only under specific conditions--to prevent escape or to prevent them from hurting themselves. With respect to medication restraint, drugs may be used to control an inmate only with the authorization of the Medical Officer and the Corrections Psychologist. Personnel required to use restraint equipment must be trained.

192. The *Mental Health Act* was amended in 1990, and the amendments became effective in March 1992. The Act as amended regulates in the following way the length of the detention under a certificate of involuntary admission and the renewal of this certificate. A patient who is detained under a certificate of involuntary admission may be detained, restrained, observed or examined for not more than two weeks from the time the person is admitted to the hospital under the certificate. This period can be extended to one month under a first certificate of renewal, and one additional month under a second certificate of renewal. A first certificate of renewal must be signed by two doctors. A second certificate must be signed by a doctor and a psychiatrist. Where a medical practitioner is of the opinion that a further extension is required, he will have to apply to a territorial judge.

Article 12

193. According to the operations manual of the Northwest Territories, whenever force is used, the staff member(s) involved must prepare a written report to be submitted to the Warden. The latter must submit a preliminary report to the director of Corrections who will decide whether a more thorough report is necessary.

194. Under the *Mental Health Act*, as modified, when it is necessary to restrain a person who is examined, admitted or detained, the person ordering or applying the restraint shall keep the patient under control by the minimal use of such force. The person must clearly document the use of restraint in the patient's health record by entering the reasons why the patient had to be restrained, a description of the patient's behaviour that made this necessary, and a description of the means of restraint.

Article 16

195. Under the *Mental Health Act*, as modified, a mentally competent person no longer needs to have attained the age of majority to give a valid consent to emergency treatment or to the administration of psychiatric treatments or psychosurgery like lobotomy.

196. The Act as modified introduces the concept of "substitute consent giver" to represent a person who is mentally incompetent. A person may consent on behalf of a voluntary or involuntary patient who has been found to be mentally incompetent to consent, if the person consenting is mentally competent to give a valid consent and is one of the following: a guardian appointed by the court, a representative appointed by the patient, the nearest relative according to the terms of the law or a friend.

197. Again under the *Mental Health Act*, as modified, the patient or, when he or she is not mentally competent, the substitute consent giver, is entitled to examine and copy the patient's health record at the expense of the patient. The administrators of a hospital must apply to the courts to prevent a patient from having access to his or her record. It must prove that disclosing the information is likely to result in harm to the treatment or recovery of the patient, injury to the mental condition of another person, or bodily harm to another person. The patient is entitled to request the correction of information in the record where he or she believes there is an error or omission in the record. He or she can require that a statement of disagreement be attached to the record reflecting any correction that was requested but not made. Finally, he or she can require that notice of the correction or notice of the statement of disagreement be given to any person to whom the record was disclosed within the year before the correction was requested or the statement of disagreement was required.

2. YUKON

Article 2: Legislative ... or other measures

198. Complementing the protections against torture and other cruel, inhuman or degrading treatment or punishment provided in the *Canadian Charter of Rights and Freedoms*, the *Canadian Criminal Code*, the *Yukon Human Rights Act* and specific legislation regarding the RCMP, Corrections Services and mental health institutions in the Yukon, the Yukon has enacted, as previously reported, the *Torture Prohibition Act*, S.Y. 1988, c. 26, which provides a means of civil redress for victims of torture.

199. At the date of this reporting, no cases have been brought under the *Torture Prohibition Act* in the Yukon.

200. Part 6 of the new *Yukon Mental Health Act*, S.Y. 1989-1990, c. 28, specifically delineates patient's rights and affords protection against potential abuses.

201. For corrections officers charged with the custody of offenders in the Yukon, conduct is regulated generally by the *Corrections Act*, S.Y. 1986, c. 36, and more particularly by the "Institutional Policy and Procedures Manual - Whitehorse Correctional Centre". Chapter 12 of the Manual specifically addresses inmates' rights and confirms that no "inmate shall be deprived of human rights except where necessary by due process of law". Section 12 of Part 12 requires that when searches of inmates are mandated they are to be conducted "avoiding undue or unnecessary force, embarrassment, or indignity to the individual".

202. For police officers in the Yukon, standards of conduct are federally regulated by the *Royal Canadian Mounted Police Act*, R.S.C. 1985, c. R-10, as amended.

Article 10: Training of public officials

203. Every recruit to the RCMP receives training on the use of force and on the relevant provisions of the *Canadian Charter of Rights and Freedoms* and the provisions of the *Criminal Code* which prohibit torture.

Articles 12 and 13: Complaints and investigations

204. Inmates of the Whitehorse Correctional Centre have a right, as set out in the "Institutional Policy and Procedures Manual", to have corrections staff facilitate access to such assistance and assist inmates affirmatively in procedures challenging conditions or treatment under confinement.

205. Part 7 of the *Royal Canadian Mounted Police Act* establishes a process whereby members of the public may register complaints concerning the "conduct in the performance of any duty or function under this Act of any member" of the force.

206. To facilitate the complaints process, a Public Complaints Commission has been established, and has been functioning for three years.

207. Nine complaints were registered with the Public Complaints Commission for the 1991-1992 fiscal year from the Yukon.

Article 14: Redress for victims

208. The Yukon's *Torture Prohibition Act* provides in section 1 that every public official, and every person acting at the instigation of or with the consent or acquiescence of a public official, who inflicts torture on any other person commits a tort and is liable and renders his or her employer liable to pay damages to the victim of the torture.

209. At the date of this reporting, no claims have been brought under the above act.

210. Yukon's *Compensation for Victims of Crime Act*, R.S.Y. 1986, c. 27, provides for compensation to victims of crime as defined by the *Criminal Code* and includes compensation to dependants of the victim in certain circumstances.

211. From the date of the first reporting to the present, two cases involving public officials have been brought under the Act, one of which resulted in a finding of abuse and compensation being paid in the amount of \$5,500.00.

212. In addition to the general right of a victim in the Yukon to bring a civil suit for compensation in cases of battery, assault, etc., where the victim has died, his or her dependants have recourse under the *Fatal Accidents Act*, R.S.Y. 1986, c. 64, to receive the compensation the victim would otherwise have been entitled to.

202. La Loi sur la Gendarmerie royale du Canada, S.R.C. 1985, c. R-10, telle que modifiée, fixe les normes de conduite des agents de police en fonction au Yukon.

Article 10 : Formation des agents de la fonction publique

203. Toutes les recrues de la GRC reçoivent une formation sur l'usage de la force et sur les dispositions pertinentes de la Charte canadienne des droits et libertés, ainsi que sur les dispositions du Code criminel concernant la torture.

Articles 12 et 13 : Plaintes et enquêtes

204. Le Manuel de la politique et des procédures institutionnelles précise que les agents des services correctionnels doivent faciliter l'accès des détenus du Centre correctionnel de Whitehorse à l'aide dont ils ont besoin pour contester leurs conditions de détention ou le traitement dont ils font l'objet pendant leur incarcération et leur accorder l'assistance requise à cet effet.

205. La Partie 7 de la Loi sur la Gendarmerie royale du Canada établit un mécanisme permettant à tout membre du public de déposer une plainte «concernant la conduite, dans l'exercice de fonctions prévues à la présente loi, d'un membre» de la Gendarmerie.

206. Afin de faciliter le processus de plainte, une Commission des plaintes du public a été instituée. Elle fonctionne depuis trois ans.

207. Pendant l'exercice 1991-1992, la Commission des plaintes du public a été saisie de neuf plaintes émanant du Yukon.

Article 14 : Mesures de redressement pour les victimes

208. L'article 1 de la Loi sur l'interdiction de la torture stipule que tout représentant de la fonction publique ou toute personne agissant à son instigation ou avec son consentement qui fait subir des tortures à une autre personne commet un délit et est redevable, et rend son employeur redevable, de dommages-intérêts à la victime.

209. Au moment de la préparation du présent rapport, aucune réclamation n'avait encore été faite en vertu de la Loi susmentionnée.

210. La Loi sur l'indemnisation des victimes d'actes criminels, S.R.Y. 1986, c. 27, prévoit l'indemnisation des victimes d'actes criminels tels que définis dans le Code criminel et, dans certaines circonstances, de leurs personnes à charge.

211. Depuis le dépôt du premier rapport, deux cas mettant en cause des représentants de la fonction publique ont été dénoncés en vertu de la Loi. Dans l'un des cas, la victime a obtenu gain de cause et reçu une indemnité de 5 500 \$.

212. Au Yukon, toute victime de voies de fait peut intenter un procès en dommages-intérêts au civil; de plus, si la victime est décédée, les personnes à sa charge sont admissibles à l'indemnisation à laquelle elle aurait eu droit en vertu de la Loi sur les accidents mortels, S.R.Y. 1986, c. 64.

197. Toujours selon la *Loi sur la santé mentale*, le malade ou, lorsqu'il est incapable, son subrogé, a le droit de consulter le dossier médical du malade et d'en faire des photocopies à ses frais. La direction de l'hôpital doit s'adresser aux tribunaux si elle veut empêcher le malade d'avoir accès à ses dossiers. Elle doit prouver que la divulgation aura pour effet de nuire au traitement ou à la guérison du malade ou de nuire à l'état mental d'une autre personne ou d'occasionner des lésions corporelles à une autre personne. Le malade a le droit de demander la correction des renseignements qui sont inscrits à son dossier médical, s'il estime qu'une erreur a été commise. Il peut demander qu'une mention de son désaccord soit versée au dossier à l'égard d'une correction qu'il a demandée mais qui n'a pas été effectuée. Finalement, il peut demander qu'un avis de la correction ou de son désaccord soit remis à toute personne à qui le dossier a été communiqué au cours de l'année qui précède la demande de correction ou d'ajout de la mention de son désaccord.

2. YUKON

Article 2 : Mesures législatives ou autres

198. Ainsi que le mentionne le rapport précédent, le gouvernement du Yukon a adopté la *Loi sur l'interdiction de la torture (Torture Prohibition Act)*, S.Y. 1988, c. 26, qui prévoit des recours civils pour les victimes de torture. Cette loi complète les mesures de protection contre la torture et autres peines ou traitements cruels, inhumains ou dégradants offertes par la *Charte canadienne des droits et libertés*, le *Code criminel* du Canada, la *Loi sur les droits de la personne (Human Rights Act)* du Yukon et les textes de loi régissant la GRC, les Services correctionnels et les établissements psychiatriques au Yukon.

199. Au moment de la préparation du présent rapport, aucun cas n'avait été soumis au Yukon en vertu de la *Loi sur l'interdiction de la torture*.

200. La Partie 6 de la nouvelle *Loi sur la santé mentale (Mental Health Act)* du Yukon, S.Y. 1989-1990, c. 28, délimite clairement les droits des patients et offre une protection contre les abus potentiels.

201. Au Yukon, la conduite des agents des services correctionnels chargés de la garde de contrevenants est généralement régie par la *Loi sur les services correctionnels (Corrections Act)*, S.Y. 1986, c. 36, et plus particulièrement par le Manuel de la politique et des procédures institutionnelles - Centre correctionnel de Whitehorse (Institutional Policy and Procedures Manual - Whitehorse Correctional Centre). Le chapitre 12 de ce manuel traite expressément des droits des détenus et confirme qu'aucun détenu ne doit être privé de ses droits fondamentaux, sauf en cas de nécessité et par procédure judiciaire devant les tribunaux. L'article 12 de la Partie 12 dispose que lorsqu'un détenu doit se soumettre à une fouille, celle-ci doit être effectuée sans recours inutile ou abusif à la force et sans embarrasser le détenu, ni porter atteinte à sa dignité.

La plupart des lois du Yukon mentionnées dans ce rapport n'ont pas encore été traduites en français. Pour faciliter la compréhension, une traduction des titres en est ici donnée et le titre officiel anglais est inséré entre parenthèses.

191. Selon le manuel des opérations du Service correctionnel, le détenu doit être informé de son droit de refuser un traitement médical. Lorsque la force doit être utilisée, ce doit toujours être à un degré minimal, selon la situation. On mentionne un nombre de cas restreint où la force peut être utilisée. Le manuel prévoit qu'on peut contraindre physiquement un détenu pour le contrôler, mais jamais pour le punir. On ne peut le contraindre que dans des situations précises, comme pour prévenir une évasion ou pour l'empêcher de se blesser. Toujours concernant la contrainte, l'usage de drogues pour contrôler un détenu doit se faire sous l'autorisation du médecin et du psychologue. On doit former le personnel appelé à utiliser le matériel servant à contraindre un détenu.

192. La *Loi sur la santé mentale* a été modifiée en 1990. Les changements sont entrés en vigueur en mars 1992. La Loi telle que modifiée régit de la façon suivante la durée de la détention prévue par un certificat de cure obligatoire et le renouvellement de ce certificat. Le malade qui est détenu en conformité avec un certificat de cure obligatoire peut être détenu, maintes, observé ou examiné pour une période ne dépassant pas deux semaines du moment de l'admission du malade à l'hôpital aux termes du certificat. Cette période peut être prolongée d'un mois, dans le cas d'un premier certificat de renouvellement et d'un autre mois supplémentaire, dans le cas d'un deuxième certificat de renouvellement. Le premier certificat ne peut être émis qu'après avis de deux docteurs. Le deuxième certificat ne peut être émis qu'après avis d'un médecin et d'un psychiatre. Si le médecin est d'avis qu'une autre prolongation est nécessaire, il devra s'adresser à un juge territorial.

Article 12

193. Selon le manuel des opérations du Service correctionnel, chaque fois qu'il est fait usage de la force, l'employé doit en faire un rapport écrit à l'administrateur. Ce dernier doit faire un rapport préliminaire au directeur qui décidera s'il y a lieu de faire une enquête plus approfondie.

194. Selon la *Loi sur la santé mentale*, telle que modifiée, lorsqu'il est nécessaire de maintenir une personne qui est examinée, admise ou détenue, la personne qui la maintient ou ordonne de le faire, recourt le moins possible à la force. Elle doit le noter au dossier médical du malade, y expliquer les raisons pour lesquelles le malade a dû être maintes, décrire le comportement du malade qui a rendu l'intervention nécessaire et fournir une description des moyens choisis.

Article 16

195. La *Loi sur la santé mentale* élimine l'obligation d'être majeur pour qu'une personne capable puisse donner son consentement à des traitements d'urgence, pour l'administration de traitements psychiatriques, ou pour l'administration d'une psychiatrie comme la lobotomie.

196. La Loi telle que modifiée introduit la notion de «subrogé» pour représenter un incapable. Une personne peut donner les consentements nécessaires au nom d'un malade en cure volontaire ou obligatoire qui a été déclaré mentalement incapable de donner un consentement valable, si cette personne est elle-même mentalement capable de donner un consentement valable et est l'une des personnes suivantes : le tuteur nommé par le tribunal, le représentant du malade, le conjoint ou parent proche selon la définition qui en est donnée par la Loi, ou un ami.

téléphonique sans frais est prévue pour les demandes de renseignements ainsi qu'un programme d'indemnisation des victimes. Le programme est appliqué par des civils, employés et bénévoles, rattachés aux corps de police locaux, ainsi que par les membres du personnel des centres de soutien aux victimes d'agressions sexuelles.

QUATRIÈME PARTIE : MESURES ADOPTÉES PAR LES GOUVERNEMENTS DES TERRITOIRES

1. TERRITOIRES DU NORD-OUEST

Article 2

185. Le manuel des opérations du Service correctionnel des Territoires du Nord-Ouest énonce des directives qui respectent la philosophie de la *Loi sur les services correctionnels*. Le manuel stipule que la philosophie des services correctionnels est basée sur la croyance que tous les êtres humains ont des droits et libertés fondamentaux nonobstant leur race, origine, couleur, religion, sexe, orientation sexuelle, langue. Les détenus ont les mêmes droits que tout autre membre de la société, sauf ceux qui leur ont été enlevés du fait de leur incarcération. Le traitement arbitraire des détenus et le non-respect de leurs droits entraînent des sanctions légales.

Article 11

186. En vertu de la *Loi sur les services correctionnels*, il existe certaines mesures destinées à assurer les droits des détenus.

187. Dès son admission dans un centre correctionnel, le détenu doit être informé des règlements qui s'appliquent aux détenus et recevoir tout autre renseignement qu'il devrait connaître. Notamment les renseignements sur les allocations et les privilèges des détenus, sur la façon dont les détenus peuvent présenter une plainte et sur la discipline.

188. La Loi stipule que la discipline et l'ordre doivent être maintenus dans un centre correctionnel, mais sans restrictions injustifiées.

189. La Loi prévoit qu'il est interdit aux employés de faire usage de la force à l'égard des détenus, sauf si cela est nécessaire, et, dans ce dernier cas, d'employer plus que la force raisonnablement nécessaire.

190. Parmi les autres droits qui lui sont garantis par la Loi, il y a le droit de communiquer avec des gens de l'extérieur, le droit de recevoir des visites, le droit de communiquer avec son avocat sans que le courtier ne soit inspecté.

avec une arme causant des lésions corporelles, les voies de fait graves, le fait de causer, de façon illégale, des blessures corporelles, l'enlèvement, la détention illégale et l'intimidation. En conformité avec la Convention, on procédera à l'examen de cette annexe pour s'assurer qu'elle couvre toutes les formes de mauvais traitements envisagés par la Convention. Les réclamations faites en vertu de la Loi sont réglées par la Commission des accidents du travail. En 1990, 3 957 réclamations ont été déposées, dont 2 637 ont donné lieu au versement de plus de 11 millions de dollars.

179. En plus des recours prévus par le *Code criminel*, il existe aussi des recours civils pour les victimes de la torture.

Article 15 : Admissibilité d'éléments de preuve

180. La non-admissibilité d'éléments de preuve obtenus par la contrainte ou par la torture est établie par la jurisprudence relative à la *Loi sur la preuve (Evidence Act)*, R.S.B.C. 1979, c. 116.

Article 16 : Autres actes constitutifs de peines ou traitements cruels, inhumains ou dégradants

181. Il est interdit de harceler sexuellement un(e) employé(e) en Colombie-Britannique. Les plaintes de cette nature sont acceptées en vertu de la *Loi sur les droits de la personne (Human Rights Act)*, S.B.C. 1984, c. 22. Dans bon nombre des différents ministères du gouvernement de la Colombie-Britannique, des politiques particulières sont aussi prévues pour interdire ce genre de harcèlement à l'égard des employés par d'autres membres du personnel.

182. Environ 18,2 p. 100 des plaintes acceptées par le Conseil des droits de la personne de la Colombie-Britannique au cours de l'année financière 1990-1991 avaient trait au harcèlement sexuel. Dans la majorité des cas entendus, le Conseil a ordonné de verser à la personne qui avait fait la plainte la somme maximale de 2 000 \$ prévue pour humiliation, embarras et préjudice moral.

183. Ces dernières années, certains cas de mauvais traitements d'ordre sexuel infligés à des enfants par des enseignants, des travailleurs sociaux et d'autres personnes en position d'autorité ont beaucoup préoccupé l'opinion publique. On vérifie maintenant s'il existe un casier judiciaire dans le cas de tous les candidats à des postes au sein du gouvernement provincial ou d'organismes publics, où ils auraient à travailler avec des enfants. Cette vérification vise à repérer ceux qui auraient peut-être déjà infligé des mauvais traitements à des enfants, afin de les empêcher d'occuper de tels postes.

184. En 1987, le ministère du Procureur général a lancé un nouveau programme d'aide aux victimes afin de fournir des services aux victimes d'actes criminels. Plus de 100 programmes se rattachent à cette initiative. Les services offerts sont notamment les suivants : assistance pratique sur la scène du crime, aide pour l'établissement des formules, soutien émotif, transport à destination et en provenance de la cour, renseignements de base sur l'évolution de leur cause, recouvrement de leurs biens et autres détails d'ordre administratif. Une ligne

concernant le traitement des détenus dans les *Règlements sur les centres correctionnels*, qui sont actuellement en cours de révision.

Articles 12 et 13 : Plaintes et enquêtes

173. À l'intention des détenus d'un centre correctionnel provincial, une procédure de règlement des griefs est prévue à l'article 40 des *Règlements sur les centres correctionnels*. Les détenus peuvent porter plainte devant des fonctionnaires désignés, de même que devant l'Ombudsman provincial. Toute la correspondance pertinente est considérée comme étant confidentielle.

174. Quant aux patients de l'hôpital psychiatrique Riverview, ils peuvent déposer une plainte auprès de tout membre du personnel ou du représentant du Bureau de l'Ombudsman provincial qui visite l'établissement toutes les semaines. On doit procéder à une enquête immédiatement et établir un rapport dans un délai de 48 heures. Le directeur exécutif de l'établissement doit renvoyer toute allégation sérieuse de mauvais traitements devant un comité d'enquête indépendant nommé par le ministre de la Santé, pour une éventuelle enquête plus approfondie. Si la plainte est adressée directement au représentant de l'Ombudsman, cette personne doit avoir accès à tous les dossiers nécessaires pour effectuer une enquête complète. Un agent de soutien bénévole peut être mis à la disposition du patient qui a subi les mauvais traitements présumés.

175. Au Forensic Psychiatric Institute, où les patients sont gardés sur ordre de la cour («certains patients sont gardés moins de 60 jours, au cours desquels on vérifie s'ils sont aptes à subir leur procès; d'autres, déclarés inaptes, sont gardés jusqu'à ce qu'ils soient jugés aptes; d'autres encore sont gardés jusqu'à ce qu'ils soient jugés aptes à fonctionner de façon sécuritaire dans une collectivité» - *Rapport annuel 1990 de l'Ombudsman*), il existe un comité des doléances des patients, formé de trois membres du personnel, qui joue un rôle important dans la réponse aux doléances des patients.

176. Les membres du public qui désirent déposer une plainte de mauvais traitements contre un agent de police peuvent le faire devant le constable en chef du corps de police en question. Les modifications apportées en 1989 à la *Loi sur la police* ont eu pour effet d'ouvrir la possibilité de porter plainte devant un nouveau commissaire aux plaintes, qui est employé par la Commission de police de la Colombie-Britannique.

177. Les Services de santé mentale du ministère de la Santé fournissent des services de consultation et de réadaptation aux réfugiés qui ont été victimes de torture dont des réfugiés en provenance du Chili et du Salvador.

Article 14 : Indemnisation de la victime

178. Le ministère du Procureur général est chargé de l'application de la *Loi sur l'indemnisation des victimes d'actes criminels (Criminal Injury Compensation Act)*, R.S.B.C. 1979, qui prévoit l'indemnisation des victimes pour diverses infractions criminelles. L'annexe de la Loi prévoit une liste de ces infractions, qui comprend les voies de fait, les voies de fait

168. Quant à la conduite des agents de correction chargés de la garde des délinquants, elle est régie par les documents suivants : la *Loi sur les services correctionnels (Correction Act)*, R.S.B.C. 1979, c. 70; un énoncé de mission intitulé *Convictions, objectifs et stratégies (Beliefs, Goals and Strategies)* (Direction des services correctionnels de la Colombie-Britannique, ministère du Procureur général, révisé en mai 1986); et des procédures particulières énoncées dans les *Règlements sur les centres correctionnels (Correctional Centre Rules and Regulations)*, 1986. Il est précisé à l'article 11 de ces règlements que l'on ne doit user de contraintes physiques que pour empêcher le détenu de se blesser ou de blesser les autres, durant son transport, ou pour éviter qu'il ne s'évade, et que le recours à des entraves autres que les menottes ou les fers aux pieds doit être signalé aux supérieurs. Conformément à l'article 22, il faut employer le moins de force possible pour procéder aux fouilles. Quant aux articles 35, 36, 37 et 38, ils énoncent les règles qui doivent régir le recours aux cellules d'isolement, y compris le droit du détenu aux repas, à l'exercice et à la surveillance d'un médecin.

169. Au principal établissement de soins psychiatriques de longue durée de la province, le Riverview Hospital, un certain nombre de politiques et de procédures ont trait à la déclaration et à l'étude des cas de mauvais traitements infligés aux patients. La politique CR1-015 énonce la marche à suivre pour rendre compte des cas de mauvais traitements infligés aux patients et pour faire enquête à ce sujet, de même que le droit de l'Ombudsman provincial de faire enquête sur les accusations de mauvais traitements et de consulter tout document nécessaire au cours d'une telle enquête.

170. Aux termes de l'article 10 de la *Loi sur les coroners (Coroner's Act)*, R.S.B.C. 1979, c. 68, un coroner doit faire enquête sur tous les cas de personnes décédées dans un établissement pénitentiaire ou une prison ou alors qu'elles étaient sous la garde d'un agent de la paix. En vertu de l'article 52, un coroner peut autoriser l'autopsie de toute personne décédée dans un hôpital ou un établissement, à la demande du conseil d'administration de cet établissement.

Article 10 : Formation des agents de la fonction publique

171. La formation des agents de police et des agents de correction est assurée par le Justice Institute, de Vancouver, qui relève du ministère du Procureur général. Pour compléter son programme de base, l'institut a mis sur pied un centre de formation en matière d'agressions familiales et de violences sexuelles, qui s'intéresse surtout aux aspects de justice criminelle de ce type de violence et où l'accent est mis sur l'intervention et la prévention.

Article 11 : Règles d'interrogatoire et dispositions concernant la garde

172. La deuxième partie du document intitulé *Convictions, objectifs et stratégies* exige que l'on assure une protection suffisante aux détenus des centres correctionnels. L'article 1 stipule que « toute personne doit être traitée avec dignité et respectée dans ses droits » et l'article 12 que « les délinquants sont membres de la société et doivent être traités avec respect et dignité et être protégés contre les traitements cruels et inusités ». On trouve des règles plus détaillées

10. COLOMBIE-BRITANNIQUE

Rôle de l'Ombudsman provincial

163. En plus des mesures législatives et des mesures administratives adoptées par les différents ministères, l'esprit de cette convention est intégralement l'objet des préoccupations du Bureau de l'Ombudsman. Aux termes de la *Loi sur l'Ombudsman (Ombudsman Act)*, R.S.B.C. 1979, c. 306, cet organisme fait enquête sur les plaintes de la population contre les agents de la fonction publique.
164. Le Bureau de l'Ombudsman s'occupe des plaintes en provenance des centres correctionnels et des centres psychiatriques pour adultes et pour jeunes. Afin de faciliter l'accès des détenus d'établissements correctionnels et des patients d'hôpitaux psychiatriques au Bureau de l'Ombudsman, ces établissements font l'objet de visites régulières. Les extraits ci-joints⁵ du rapport annuel de l'Ombudsman font état d'un certain nombre de plaintes relatives à des mauvais traitements qui auraient été infligés à des détenus ou à des patients.
165. L'Ombudsman procède aussi à l'étude de secteurs particuliers de l'administration provinciale pour s'assurer que la procédure y est organisée de manière à répondre efficacement aux préoccupations de la population. Une étude a été effectuée en 1986 au sujet de la procédure de règlement des plaintes contre la police afin de préciser qui devrait faire enquête et statuer sur les plaintes de la population contre les agents de police. La *Loi sur la police (Police Act)* a fait l'objet, en 1989, de modifications visant à faire en sorte qu'une autorité impartiale, la Commission de police, soit habilitée à faire enquête sur les plaintes des citoyens et à les régler.

Article 2 : Mesures législatives ... ou autres

166. Le ministre du Procureur général est chargé de l'application des dispositions statutaires et de la poursuite des auteurs d'infractions au *Code criminel* du Canada. Aucune disposition des lois ou des politiques de la Colombie-Britannique ne peut être invoquée pour justifier la torture ou d'autres traitements inhumains. Les lois, politiques et procédures sont données ci-dessous par secteur de programme.
167. Pour les agents de police, les normes de conduite sont établies par la *Loi sur la police*, R.S.B.C. 1979, c. 331, ainsi que par un Code disciplinaire inclus dans l'annexe A du règlement d'application de cette loi (*Police (Discipline) Regulations* - B.C. Reg. 330/75). L'alinéa 7b) du Code signale que l'action suivante est passible de mesures disciplinaires : « toute violence inutile à l'égard d'un prisonnier ou d'une autre personne qu'il peut être amené à côtoyer dans l'exercice de ses fonctions ».

⁵ Ces documents sont transmis séparément comme documents de référence à l'attention des membres du Comité contre la torture.

155. Toute ordonnance d'isolement nécessite l'attestation par deux médecins ou par un médecin avec un rapport de laboratoire comme preuve que la personne en question a telle ou telle maladie et ne se conforme pas aux ordonnances des médecins. Les mêmes enseignements doivent être communiqués aux personnes sous le coup d'une ordonnance d'isolement qu'à celles visées par un certificat.

156. Les personnes détenues en vertu d'un certificat ou d'une ordonnance d'isolement peuvent présenter à la Cour du Banc de la Reine une demande d'annulation du certificat ou de l'ordonnance.

157. Le ministre du Solliciteur général applique la *Loi sur la police (Police Act)*, S.A. 1988, c. P-12.01, qui prévoit, à l'intention du public, un mécanisme de plainte aux termes de la partie V. Il est possible de déposer, contre un service ou un agent de police, une plainte dont peut être saisi le Bureau d'enquête sur l'application de la loi (Law Enforcement Review Board), tribunal indépendant qui en détermine la validité. S'il est découvert durant le processus de plainte qu'il y a eu infraction criminelle, l'affaire doit être renvoyée devant le Procureur général qui décide s'il y a lieu de porter des accusations.

Partie A b) iii)

158. Il n'y a pas eu de jurisprudence nouvelle touchant la mise en œuvre de la Convention.

Partie A b) ii)

159. En 1990, le Bureau d'enquête sur l'application de la loi a statué sur 43 affaires, dont aucune n'était liée à des infractions d'ordre criminel.

Partie A b) iv)

160. Aucun commentaire.

Partie II : Renseignements demandés par le Comité durant son examen du premier rapport du Canada

161. Il n'existe pas de statistiques quant au nombre de fonctionnaires de l'État qui ont été poursuivis pour avoir commis ou autorisé des actes de torture ou autres peines ou traitements cruels, inhumains ou dégradants.

162. Dans le cadre de leur programme de formation de base, les agents des services correctionnels reçoivent une journée de formation sur les droits de la personne et les limites quant à l'utilisation de la force. Les agents de police reçoivent jusqu'à deux semaines de formation sur le recours à la force et une demi-journée sur les droits de la personne.

9. ALBERTA

Partie I a) i) et ii) — Article 16

148. Le ministère de la Famille et des Services sociaux a adopté une nouvelle politique liée à l'article 16. Aux termes de cette politique, les châtimens corporels à l'égard des enfants placés en famille d'accueil seront absolument interdits à compter du 1^{er} janvier 1993. Une politique provisoire restreindra considérablement le recours aux châtimens corporels sur la personne des enfants qui sont en foyer d'accueil sous la tutelle du ministère. Cette politique provisoire précise les circonstances restreintes où il est permis d'avoir recours aux châtimens corporels et exige que tous les incidents soient consignés par écrit. Elle exige en outre que les parents de famille d'accueil soient initiés à des méthodes disciplinaires de rechange.

Partie I b) i) — Articles 11, 12, 13 et 16

149. Une nouvelle *Loi sur la santé mentale (Mental Health Act)* est entrée en vigueur en 1990, laquelle permet de détenir des patients contre leur gré à des fins d'examen et de traitement. Toutefois, cette loi prévoit également la mise sur pied d'un système exigeant l'établissement d'un certificat d'admission et son renouvellement pour détenir une personne. La durée de la période maximale de détention d'une personne est de six mois, ce qui exige un certificat de renouvellement signé par deux médecins, dont l'un doit être psychiatre.

150. Tous les patients en cure obligatoire doivent être informés de la raison de leur détention et de leur droit d'en appeler devant un comité de révision pour fins d'annulation d'un certificat. Ce renseignement doit également être communiqué au tuteur du patient, à son plus proche parent ou à une autre personne désignée par lui.

151. Le conseil d'administration de l'établissement doit assurer les services d'un interprète, au besoin, et aider le patient à présenter sa demande au comité de révision. Ni le conseil d'administration ni le personnel de l'établissement ne doivent prendre connaissance des communications écrites adressées au patient ou émanant de lui.

152. Les deux mentions qui suivent ne sont pas nouvelles, mais auraient dû être incluses dans le premier rapport.

153. La *Loi sur la santé publique (Public Health Act)* autorise la détention d'une personne soupçonnée d'avoir une maladie contagieuse, et ce, à des fins d'examen et d'enquête. La personne ne peut être détenue que 24 heures, à moins que l'on ne demande aux tribunaux de prolonger le délai pour un maximum de deux périodes d'une durée de sept jours chacune.

154. Si une personne a une maladie contagieuse donnée (au sens du Règlement) et qu'elle refuse de se conformer aux ordonnances d'un médecin, le médecin-hygieniste peut délivrer un certificat ordonnant son arrestation, sa détention et son traitement. Cependant, cette personne doit être examinée dans les 24 heures et informée du motif de sa détention ainsi que de son droit juridique de se prévaloir des services d'un avocat. La personne doit être libérée dans les sept jours, à moins que ne soit délivrée une ordonnance d'isolement.

142. Selon le règlement d'application de la Loi sur les normes hospitalières (*The Hospital Standards Act*), il faut, avant que puisse se pratiquer une intervention chirurgicale, que le conseil d'administration de l'hôpital ait obtenu le consentement du patient. D'ordinaire, les conseils d'administration demandent systématiquement à tous les patients admis dans leur établissement s'ils consentent aux traitements.

143. L'article 25 de la Loi sur les services de santé mentale (*The Mental Health Services Act*) interdit aux médecins et à toute autre personne d'administrer un traitement psycho-chirurgical ou expérimental aux patients admis sans leur consentement dans un établissement de santé mentale. D'autres articles de la Loi font en sorte que les personnes souffrant de troubles mentaux qui sont admises sans leur consentement, ou leurs parents les plus proches, soient informés de leur droit d'en appeler de cette détention non volontaire devant un comité d'examen ou un tribunal. De plus, tous les patients consentants ont accès à des services de représentation indépendants s'ils estiment avoir été traités injustement. La Direction des soins à domicile du ministère de la Santé a adopté une politique qui exige que les comités des soins à domicile voient à ce que les droits des patients soient respectés, à ce que les dossiers des patients demeurent confidentiels et à ce que les clients soient informés de leur droit d'en appeler des décisions relatives aux services fournis.

144. Selon les lignes directrices applicables aux foyers de soins spéciaux de la Saskatchewan, les pensionnaires doivent recevoir des soins prévenants et respectueux et être protégés contre toute blessure, dans la mesure où celle-ci peut être prévue. Le *Règlement sur les foyers de soins personnels* (*The Personal Care Home Regulations*) stipule que les pensionnaires doivent être à l'abri de toute mesure à caractère punitif, y compris les châtements physiques, les menaces de toutes sortes, l'intimidation, les mauvais traitements d'ordre verbal, mental ou émotif, ou la réclusion.

145. Le Conseil de recherches médicales du Canada a établi des lignes directrices pour aider les chercheurs et les établissements de soins de santé à prendre des décisions d'ordre moral au sujet d'activités de recherche sur des sujets humains. Ces lignes directrices traitent des principes du consentement éclairé, de l'évaluation des risques et avantages, de la confidentialité de l'information et de la mise en oeuvre des responsabilités d'ordre moral.

146. Des codes de déontologie ont été établis par les associations professionnelles de médecins, d'infirmières, de psychologues et de travailleurs sociaux pour guider les professions auxquelles ils appartiennent dans leurs relations avec leurs patients ou leurs clients. Ces codes obligent habituellement les professionnels à respecter la dignité et la capacité de décision de leurs patients ou clients et à leur éviter les préjudices et les blessures inutiles.

2) Services correctionnels

147. La Division des services correctionnels du ministère de la Justice a adopté plusieurs nouvelles politiques touchant la façon de traiter les détenus des centres correctionnels de la province. L'une de ces politiques restreint la divulgation des renseignements personnels concernant les détenus. Les bienfaits découlant des loisirs et le droit, pour les détenus, d'en profiter sont maintenant reconnus officiellement par un énoncé de principes et de normes. La Division des services correctionnels a également adopté des lignes directrices afin de pourvoir aux besoins des personnes handicapées. Cette nouvelle politique vise à ce que l'on réponde adéquatement aux besoins des détenus handicapés.

ouvrir l'accès. Sous certaines réserves, les pensionnaires d'établissements de garde ont accès régulièrement à leur famille immédiate et à d'autres personnes importantes dans leur vie, pourvu qu'un surveillant d'unité leur en donne l'autorisation. Ils ont accès, par téléphone, à des heures raisonnables de la journée, à leur avocat, à l'Ombudsman ou à la police, s'ils en font la demande.

137. Dans les établissements de garde en milieu fermé, il est parfois nécessaire de soumettre les jeunes contrevenants à certaines contraintes physiques. Ces contraintes sont employées régulièrement pour assurer l'accompagnement sans problème de pensionnaires à haut risque pour la sécurité hors des aires sécuritaires et dans la collectivité. On peut également y avoir recours dans certaines situations à des fins de sécurité interne. Cependant, cette mesure est soumise à des règles et à un contrôle stricts. Les pensionnaires d'établissements de garde en milieu ouvert ne font pas l'objet de contraintes physiques.

138. Les cas de voies de fait manifestes ou présumées sur la personne de jeunes contrevenants de la part d'autres pensionnaires ou de membres du personnel sont immédiatement examinés par le directeur de l'établissement de garde et, selon le résultat de cet examen, peuvent être renvoyés à la police pour enquête. Le renvoi est obligatoire chaque fois que la victime des voies de fait présumées en fait expressément la demande. Le directeur de l'établissement renvoie l'affaire de son propre chef s'il a des motifs raisonnables ou probables de croire qu'il pourrait y avoir eu délit criminel de voies de fait.

3) Enfants confiés à la garde de la province

139. La Loi sur les services à l'enfance et à la famille (*The Child and Family Services Act*) exige que le ministre des Services sociaux se charge des frais d'hébergement, de subsistance, d'éducation et de garde des enfants qui se révèlent avoir besoin de protection durant la période de garde ou de détention. Pour ce qui est des enfants placés sous la garde du Ministre, le directeur régional doit informer le directeur exécutif de la Division des services à la famille de tout incident grave, et ce, dans les 24 heures, qu'il lui faire rapport plus tard par écrit. Constituent des incidents graves, entre autres :

a) la mort d'un enfant;

b) les blessures graves infligées à un enfant; et

c) les allégations d'abus sexuel d'un enfant.

140. Toutes les plaintes de mauvais traitements ou de négligence à l'égard d'enfants placés sous garde doivent faire immédiatement l'objet d'une enquête et, si l'on y fait en outre mention de la possibilité qu'il y ait eu voies de fait, l'affaire est renvoyée à la police pour enquête conjointe.

Article 16

1) Soins de santé

141. En Saskatchewan, dans le secteur de la santé, un certain nombre d'exigences, d'ordre législatif ou autre, ont été prévues afin d'éviter que les personnes qui reçoivent des soins de santé ne soient soumises à des peines ou des traitements cruels, inhumains ou dégradants.

8. SASKATCHEWAN

129. Le présent rapport constitue une mise à jour, au 1^{er} janvier 1992, de l'information concernant la Saskatchewan contenue dans le premier rapport du Canada sur la Convention.

Article 13

1) Plaintes contre la police

130. La Loi de 1990 sur la police (*The Police Act, 1990*), qui remplace la loi antérieure du même nom, a été promulguée le 1^{er} janvier 1991. Cette loi renferme de nouvelles dispositions pour le traitement des plaintes du public contre des policiers. Elle prévoit la nomination d'un enquêteur civil indépendant dont la tâche consiste à informer, à conseiller et à aider les plaignants, de même qu'à contrôler et à surveiller le traitement des plaintes. L'enquête, qui s'ajoute à toute action pouvant être intentée au civil ou au criminel contre le policier, doit être menée d'une manière «conforme à l'intérêt public».

131. Une fois qu'il a fini son étude de la plainte, l'enquêteur présente un rapport écrit au chef du service de police et peut, s'il le juge à propos, en faire tenir copie au président de la Commission de police. La Loi prévoit également le règlement à l'amiable des plaintes du public, moyennant consentement du plaignant.

132. S'il y a lieu, l'affaire est renvoyée au Procureur général aux fins de poursuites ou à la Commission de police aux fins de mesures disciplinaires.

133. Lorsque l'enquête mène à des mesures disciplinaires, la Loi prévoit la suspension du policier en attendant l'audience disciplinaire devant un agent d'audition désigné par le ministre de la Justice. Le plaignant est informé de la tenue de l'audience, laquelle a lieu à huis clos, à moins que l'agent, l'enquêteur, le plaignant et le poursuivant n'en conviennent autrement.

134. Les sanctions prévues en cas d'infraction d'ordre disciplinaire sont notamment les suivantes : congédiement, rétrogradation, suspension avec ou sans traitement, amende pouvant atteindre 1 000 \$, période de probation ou de surveillance étroite, ordonnance obligeant le policier à consulter un spécialiste ou à suivre un traitement ou de la formation, réprimande ou tout autre ordonnance que l'agent d'audition jugera appropriée.

135. L'ordonnance de l'agent d'audition peut être portée en appel, moyennant permission, devant la Commission de police.

2) Jeunes contrevenants placés sous garde

136. La Direction des jeunes contrevenants du ministère des Services sociaux a pour politique d'exiger que les avocats, l'Ombudsman et les enquêteurs aient raisonnablement accès, lorsqu'ils en font la demande, à leurs clients qui sont de jeunes contrevenants. En outre, tous les jeunes contrevenants sont informés des services d'aide juridique disponibles et s'en voient

L'Ombudsman peut aussi prendre l'initiative de mener des enquêtes. Cependant, l'enquête est discrétionnaire, et les seuls pouvoirs de réparation dont dispose l'Ombudsman sont de déposer des rapports et de faire des recommandations.

124. Aux termes des nouvelles dispositions de la *Loi sur la santé mentale*, R.S.M., c. M110, toute personne admise dans un centre psychiatrique doit être informée : a) du lieu où elle est détenue; b) du motif de sa détention; et c) de son droit d'avoir recours aux services d'un avocat. En outre, on doit lui faire part par écrit des fonctions du conseil de révision, de la manière d'interjeter appel devant ce conseil, ainsi que de son droit d'expédier et de recevoir du courrier, de retenir les services d'un avocat et de lui donner des directives, etc.

Article 14

125. Le 30 août 1989, les annexes de la *Loi sur l'indemnisation des victimes d'actes criminels*, R.S.M. 1987, c. C305, étaient modifiées par le décret du Conseil 219/89 dans le but explicite d'inclure les crimes de torture et de détention illégale parmi les infractions indemnifiables. L'indemnisation se fait à même les fonds publics. Bien qu'aucune réclamation de cette nature n'ait été faite jusqu'ici, si l'on en recevait une, la victime aurait droit aux mêmes avantages que tout autre victime qualifiée.

126. La *Loi sur les droits des victimes d'actes criminels*, S.M. 1986-1987, c. 280 (J40), prévoit la mise sur pied d'un comité de l'aide aux victimes afin de promouvoir, entre autres choses, la prestation de services aux victimes d'actes criminels (y compris la torture). Est également prévue la création d'un fond d'aide aux victimes, à même lequel le Cabinet peut autoriser l'engagement de dépenses pour la promotion et la prestation de services aux victimes et la recherche sur les services aux victimes, de même que les besoins et préoccupations de celles-ci. Le fond ne sert pas à indemniser directement les victimes d'actes criminels.

Article 16

127. Le *Code des droits de la personne* prévoit un moyen de recours pour quiconque a fait l'objet d'une discrimination non raisonnable (y compris le harcèlement) du fait de caractéristiques de son groupe telles que la race, la religion, les convictions politiques, etc. De plus, la conduite des autorités provinciales est susceptible d'être examinée devant un tribunal dans le contexte de l'article 12 de la Charte qui interdit les traitements ou peines cruels et inusités. Par exemple, dans l'arrêt *R. c. Sawchuk* (non publié, 24 juin 1991), la Cour d'appel du Manitoba a rejeté une allégation selon laquelle la détention d'un prévenu de 23 ans qui avait l'âge mental d'un enfant de 12 ans équivalait, compte tenu des circonstances, à une violation de l'article 12.

128. De récentes modifications apportées au *Code criminel* ont eu pour effet de remplacer le Conseil consultatif de révision du lieutenant-gouverneur par un conseil de révision investi du pouvoir de réviser et de rendre des décisions relatives aux délinquants souffrant de troubles mentaux qui ont maille à partir avec la justice criminelle. Les critères pris en considération sont la nécessité de protéger la population contre les personnes dangereuses, l'état mental du prévenu, sa réintégration dans la société et ses autres besoins.

non physiques autant que physiques. Les services correctionnels pour adultes offrent, à l'intention du personnel, des cours de formation sur la sécurité dynamique, le règlement des conflits et la discipline positive.

Article 11

119. Tant les Services correctionnels pour adultes que les Services correctionnels communautaires et pour les jeunes mènent régulièrement des examens opérationnels d'ensemble des politiques et des pratiques de leurs unités opérationnelles. Les rapports d'évaluation venant couronner ces examens contribuent à la planification stratégique.

Article 12

120. La tenue d'une enquête est nécessaire, aux termes du paragraphe 7(5) de la *Loi sur les enquêtes médico-légales*, S.M. 1989-90, c. 30(F52), dans le cas des personnes décédées alors qu'elles étaient sous la garde d'un agent de la paix ou qu'elles se trouvaient dans un établissement de correction, une prison, une salle de police militaire ou un établissement visé par la *Loi sur la santé mentale* ou encore dans le cas de personnes décédées de façon inexplicable ou inattendue. S'il y a lieu, une enquête en bonne et due forme, avec rapport, suivra. Aux termes du paragraphe 19(3), lorsque l'enquête révèle qu'il existe des motifs raisonnables de croire qu'une personne détenue dans un établissement correctionnel ou placée contre son gré dans un établissement psychiatrique est décédée de façon inexplicable ou par suite d'un acte de violence ou de négligence, le médecin en chef doit ordonner à un juge de la Cour provinciale de tenir une enquête.

121. Les Services correctionnels pour adultes procèdent systématiquement à des enquêtes de suivi sur tous les incidents inhabituels (suicide, désordres, etc.) afin d'établir les faits et de faire des recommandations concernant les modifications à apporter aux politiques ou les mesures disciplinaires à prendre, le cas échéant. Les Services correctionnels communautaires et pour les jeunes disposent d'un protocole pour le renvoi des allégations de mauvais traitements d'ordre physique ou sexuel aux autorités chargées des enquêtes. Avant d'être embauché, tout nouvel employé fait l'objet d'une enquête visant à déterminer si ses antécédents personnels lui permettent d'occuper le poste.

Article 13

122. Dans les établissements correctionnels pour adultes, les détenus ont accès directement, par le courrier ou le téléphone, à l'Ombudsman provincial, à la Commission des droits de la personne et aux médias locaux. Quant aux établissements de détention pour les jeunes, ils ont pour politique d'assurer un accès direct et sans surveillance, par le courrier ou le téléphone, à l'Ombudsman ou au directeur de l'établissement.

123. L'article 15 de la *Loi sur l'Ombudsman*, R.S.M. 1987, c. 045, permet à l'Ombudsman de faire enquête sur toute action ou omission d'un ministre ou d'un organisme gouvernemental relativement à une question d'administration. Les personnes détenues dans une prison ou un établissement provincial peuvent donc déposer une plainte devant ce fonctionnaire.

familiarise avec les politiques et procédures du ministère. Le cas échéant, il administre immédiatement aux détenus les soins dont ils ont besoin. S'il y a lieu, le personnel médical rend compte des blessures et affections au surintendant ou au conseiller médical principal du ministère, ou aux deux.

113. Au ministère de la Santé, tous les hôpitaux psychiatriques ont une politique touchant la déclaration des allégations de mauvais traitements sur la personne de patients. Les membres du personnel des établissements doivent se familiariser avec les politiques et procédures et signaler toute allégation d'incident à leur surveillant immédiat qui prendra les mesures nécessaires pour donner suite à l'allégation.

114. Quant à la question de l'indemnisation des victimes, l'article 5 de la *Loi sur l'indemnisation des victimes d'actes criminels* de l'Ontario prévoit des indemnisations lorsque la victime a été blessée ou tuée par suite d'un acte criminel violent survenu en Ontario.

7. MANITOBA

Article 2

115. Le ministère de la Justice du Manitoba est maintenant responsable de l'application du *Code criminel* (y compris les dispositions contre la torture) au Manitoba, ainsi que de la *Loi sur les services correctionnels*.

116. La *Loi sur les services correctionnels* a été votée de nouveau, cette fois sous la référence S.R.M. 1988, c. C230. L'article 34 autorise maintenant le directeur de tout établissement correctionnel à établir des règles de conduite, tandis que l'article 36 autorise l'adoption de règlements régissant la conduite et les fonctions des agents et employés des établissements de correction, leur formation, de même que le bien-être général et le soin des détenus. Des lignes de conduite régissent le recours à la force par le personnel.

117. Aux établissements de détention pour les jeunes, il existe des lignes de conduite sur le recours à la force par le personnel, la déclaration des mauvais traitements d'ordre physique et sexuel, l'accès des pensionnaires à la procédure de règlement des griefs, la déclaration des cas de recours à la force et d'autres questions relatives aux peines ou traitements cruels, inhumains ou dégradants. Les établissements de garde en milieu ouvert implantés dans la collectivité doivent détenir une licence décernée par le ministre de la Justice et répondre aux conditions prescrites. L'une de ces conditions est que le directeur soit personnellement apte à traiter convenablement les jeunes.

Article 10

118. Le personnel chargé de la détention, des interrogatoires ou du traitement des personnes mises aux arrêts, détenues ou emprisonnées continue de recevoir de l'information générale sur les obligations découlant de ses fonctions dans le contexte de la Convention. Les préposés à la garde des jeunes apprennent à prévenir les crises et à se servir des techniques de contraintes

été mêlée et où a eu lieu une blessure grave ou un décès qui a pu résulter d'infractions criminelles commises par des policiers. Après l'enquête, le directeur de l'unité décide s'il existe des motifs raisonnables et probables de déposer des accusations au criminel. Si des accusations sont déposées, les cours criminelles les étudient de la manière habituelle.

105. Le ministère des Services correctionnels a prévu un mécanisme pour faire officiellement enquête sur les cas de recours à la force.

106. Le personnel du ministère des Services sociaux et communautaires doit signaler tout soupçon qu'il peut entretenir quant à la possibilité qu'un enfant soit victime de mauvais traitements, y compris tout enfant placé dans un établissement du ministère pour jeunes contrevenants.

Article 13

107. La nouvelle *Loi sur les services policiers* prévoit des mesures pour assurer la participation de civils à la procédure relative aux plaintes et aux enquêtes. L'une de ces mesures est l'établissement d'un système public de traitement des plaintes dirigé par un commissaire civil aux plaintes et administré par le ministère du Procureur général.

108. Une procédure de plainte est prévue à l'intention des jeunes personnes participant à des programmes résidentiels relevant du ministère des Services correctionnels.

Article 16

109. Par suite de la décision rendue en 1991 par la Cour d'appel de l'Ontario dans l'affaire *Flemming c. Reid & Gallagher*, il n'est plus permis d'imposer des traitements à un patient qui les a refusés lorsqu'il était capable de le faire.

110. Le *Loi sur le ministère des Services correctionnels* interdit les châtements corporels sur la personne de tout enfant qui reçoit des services en vertu de cette loi.

111. Tout pensionnaire d'établissement psychiatrique âgé de plus de 16 ans et déclaré inhabile a le droit de demander à un comité de révision de désigner quelqu'un pour prendre en son nom des décisions quant aux traitements. La *Loi sur la santé mentale* renferme des dispositions qui précisent dans quels cas l'on peut avoir recours à la contrainte, ajoutant que les circonstances doivent être consignées sur la fiche clinique. Tous les hôpitaux psychiatriques de la province ont adopté une politique concernant la déclaration des allégations de mauvais traitements sur la personne d'un patient. Les pensionnaires d'établissements psychiatriques de la province ont accès à une personne-ressource qui peut donner suite à toute plainte ou doléance formulée par eux.

Deuxième partie — Renseignements complémentaires demandés par le comité

112. En vue d'apprendre à s'occuper des cas de mauvais traitements et de torture dans les établissements régis par le ministère des Services correctionnels, le personnel médical se

Article 11

99. L'une des importantes initiatives du ministère du Solliciteur général a consisté à établir des normes ou des lignes directrices pour régir les activités policières.

100. Ces normes et ces lignes directrices précisent notamment que, lorsque des personnes sont sous la garde de la police :

a) Tous les locaux doivent être sécuritaires et adéquatement surveillés, chauffés, éclairés et ventilés; ils doivent en outre être dotés d'une couchette et d'installations de toilette salubres.

b) Il faut faire venir sans délai un médecin lorsqu'un prisonnier est inconscient ou semble malade ou blessé et qu'il a manifestement besoin d'une aide médicale. Une attention toute particulière est accordée aux prisonniers que l'on sait ou que l'on soupçonne d'être atteints d'une maladie mentale ou enclins au suicide. Les prisonniers sont alimentés à l'heure normale des repas.

c) Ils jouissent du droit fondamental de retenir les services d'un avocat et de s'entretenir avec lui de leur cas en privé.

d) Les fouilles sont menées en tenant compte comme il se doit de l'embaras que cela pourrait causer à ceux et à celles qui en font l'objet et, autant que faire se peut, elles sont confiées à des agents du même sexe.

101. Le ministère des Services correctionnels procède constamment à des examens et à des mises à jour des politiques et des procédures relatives au traitement des détenus adultes et des jeunes personnes. Le ministère prévoit des établissements de garde et de détention pour les jeunes de 16 et 17 ans. Ces établissements correctionnels sont surveillés de près par le ministère.

102. Toutes les jeunes personnes détenues ou placées sous garde dans des établissements du ministère des Services sociaux et communautaires sont informées de l'existence et des fonctions du Bureau d'assistance à l'enfance et à la famille et de leur droit de communiquer avec cet organisme en toute confidentialité.

103. En 1990, ce ministère a passé en revue toutes les mesures de protection prévues pour les enfants placés en établissement. Un rapport renfermant 65 recommandations sert maintenant à assurer la sécurité des jeunes et des enfants placés en établissement.

Article 12

104. En application des lignes directrices établies par le ministère du Solliciteur général, le chef de la police ou le commissaire de la police provinciale de l'Ontario soumet à un examen tous les cas où il y a eu recours à la force. De surcroît, une unité d'enquêtes spéciales créée aux termes de la *Loi sur les services policiers* enquête sur les incidents auxquels la police a

98. Le personnel du réseau des établissements pour jeunes contrevenants du ministère des Services sociaux et communautaires apprend à intervenir en cas d'urgence ainsi qu'à prévenir les comportements agressifs et à y faire face.

Article 10

97. Les employés du ministère des Services correctionnels sont soumis aux dispositions du *Code criminel* régissant l'usage de la force dans l'exercice de leurs fonctions.

96. La *Loi sur les services policiers* de l'Ontario, qui a été promulguée en 1990, régit tous les corps de police de l'Ontario. Au nombre des principes qui y sont énoncés, figure la nécessité d'assurer la sécurité de tous et de toutes en Ontario ainsi que de sauvegarder les droits fondamentaux garantis par la *Charte canadienne des droits et libertés* et le *Code* (ontarien) *des droits de la personne* de 1981.

Article 2

Première partie — Mesures nouvelles et faits nouveaux

95. Le gouvernement de l'Ontario, après avoir continué d'examiner ses lois, ses programmes, ses politiques et ses pratiques depuis la publication du premier rapport du Canada, est convaincu que le tout demeure conforme aux dispositions de la Convention. Les renseignements qui suivent se veulent une mise à jour du premier rapport.

6. ONTARIO

94. Depuis la publication du premier rapport, une mesure administrative complémentaire a été adoptée. Les policiers sont systématiquement informés sur les techniques et les limites légales de l'emploi de la force et sur la responsabilité de l'agent de la paix.

93. D'autre part, la formation dispensée par l'Institut en matière d'emploi de la force est axée sur la dimension pratique et technique de l'intervention policière dans le contexte législatif et réglementaire et ce, en conformité avec les garanties juridiques consacrées par les chartes canadienne et québécoise des droits.

92. Quant à la formation de policier, elle est confiée, au Québec, à l'Institut de police. Au cours de sa formation à l'Institut, chaque stagiaire est évalué sur son habileté et sa compétence à mettre en pratique ses connaissances professionnelles dans le respect des droits fondamentaux de la personne et ce, à tous les stades de l'action policière : arrestation, détention, emprisonnement, perquisition et enquête.

91. Par ailleurs, le ministère de la Sécurité publique a adopté une politique relative à l'enquête policière dans le cas d'événements impliquant un policier ou un corps de police. Selon cette politique, lorsqu'une personne décide à l'occasion d'une intervention policière, l'enquête est confiée à un corps de police autre que celui qui est impliqué.

85. Le personnel du réseau des établissements de détention reçoit une formation diversifiée, axée sur le respect de la personne et de ses droits et, jusqu'à présent, aucune accusation n'a été portée contre des membres du personnel de ce réseau aux termes des dispositions insérées dans le *Code criminel* concernant la torture.

86. Chaque établissement dispose d'un système de traitement des éventuelles plaintes, lequel débouche, le cas échéant, sur une intervention de la Direction de la détention du ministère de la Sécurité publique. Les personnes incarcérées peuvent également porter plainte auprès du Procureur du citoyen ou de la Commission des droits et libertés de la personne. Ces recours ne les privent aucunement de faire appel aux tribunaux de droit commun s'ils estiment que leurs droits ont été lésés.

SUR LE PLAN POLICIER

87. Une importante réforme policière, enclenchée au Québec en décembre 1988, a conduit à l'adoption d'un Code de déontologie uniforme pour tous les policiers et à la création de deux nouvelles instances distinctes, chargées d'assurer le respect du Code : le Commissaire à la déontologie policière et le Comité de déontologie policière. Cette réforme est entrée en vigueur le 1^{er} septembre 1990.

88. Le Code de déontologie des policiers s'applique à tous les policiers du Québec, à l'exception des membres de la Gendarmerie royale du Canada travaillant au Québec, qui relèvent du gouvernement fédéral canadien. Ce Code vise à assurer une meilleure protection du citoyen en développant, chez les policiers, des normes élevées de service à la population et de conscience professionnelle dans l'exercice de leurs fonctions et ce, dans le respect des droits et libertés de la personne. Il prescrit les devoirs et les normes de conduite des policiers dans leurs rapports avec le public.

89. Alors qu'auparavant, les citoyens s'estimaient lésés par la conduite de policiers pouvaient formuler leur plainte au corps de police concerné ou à la Commission de police du Québec, le Commissaire à la déontologie policière est maintenant seul autorisé à recevoir de telles plaintes. Le plaignant et le policier concerné, de même que son directeur, sont informés du cheminement de la plainte. Si celle-ci est rejetée, le plaignant peut demander que cette décision soit révisée par le Comité de déontologie policière. Le commissaire peut aussi, selon la gravité de l'acte dérogatoire, citer le policier à comparaître devant le Comité de déontologie policière ou transmettre le dossier au procureur général en vue d'une étude sur l'opportunité d'une poursuite criminelle.

90. Le Comité de déontologie policière, composé d'un président et de trois vice-présidents, tous avocats admis au Barreau depuis au moins dix ans, a compétence pour disposer de toute citation portée par le commissaire et de toute demande de révision requise par le plaignant. Le Comité, dont les auditions sont publiques, sauf exception, est généralement composé d'un banc de trois personnes : un avocat, un policier et un citoyen qui n'est ni avocat, ni policier. Toute décision finale du Comité peut être portée en appel devant le tribunal de droit commun, la Cour du Québec. La décision du juge de cette cour est finale et sans appel et ne peut être soumise à un arbitre.

78. Le gouvernement du Québec s'est engagé à respecter les dispositions de la *Convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants* en adoptant, le 10 juin 1987 et conformément à son droit interne, le décret n°. 912-87.

79. Le présent rapport met à jour, au 31 décembre 1991, les informations contenues au premier rapport du Canada sur l'application de ladite Convention.

80. Aux termes de la *Charte des droits et libertés de la personne* du Québec, adoptée en 1975 par l'Assemblée nationale, «tout être humain a droit à la vie, ainsi qu'à la sûreté, à l'intégrité et à la liberté de sa personne». Sur la base de ce texte fondamental, des mesures législatives et administratives ont été prises pour s'assurer du respect des dispositions de la Convention sur le plan législatif.

SUR LE PLAN LÉGISLATIF

81. La législation québécoise ne contient aucune disposition susceptible d'être jugée non conforme aux droits fondamentaux inscrits dans la Convention.

82. En matière civile, le Québec a procédé à une importante réforme de son droit qui a conduit, le 18 décembre 1991, à la sanction du *Code civil du Québec*, L.Q. 1991, c. 64. L'article 2858 de ce Code énonce une nouvelle règle de preuve à l'effet que «le tribunal doit, même d'office, rejeter tout élément de preuve obtenu dans des conditions qui portent atteinte aux droits et libertés fondamentaux et dont l'utilisation est susceptible de déconsidérer l'administration de la justice». Cette disposition aura notamment le double effet de promouvoir les buts de la Convention et de s'assurer que le droit à l'intégrité de la personne ne puisse faire l'objet d'une atteinte à cause d'un silence de la loi.

83. Notons qu'en matière pénale, l'article 61 du *Code de procédure pénale*, L.R.Q., c. C-25.1, prévoit que «les règles de preuve en matière criminelle, dont la *Loi sur la preuve au Canada*, L.R.C. 1985, c. C-5, s'appliquent». Cette disposition est entrée en vigueur le 1^{er} octobre 1990. En vertu de l'article 231 de ce Code, entré en vigueur au même moment, les infractions aux lois du Québec ne peuvent être sanctionnées par une peine d'emprisonnement, sauf lorsqu'une disposition contraire du Code le prévoit et sauf dans le cas d'outrage au tribunal.

SUR LE PLAN CORRECTIONNEL

84. Pour l'année 1990-91, 74 465 entrées ont été enregistrées dans le réseau québécois des établissements de détention. De ce nombre, 52 956 étaient des admissions et 21 509, des transferts. Ainsi la population moyenne inscrite quotidiennement était de 4133,9 personnes, soit 1223,2 prévenus et 2910,7 détenus.

droits et libertés fondamentaux que conservent les détenus (droits de vote, d'association et d'expression et liberté de religion) et l'équité de la procédure de décision interne (fouilles et saisie, ségrégation administrative, transferts des détenus et procédures disciplinaires). Par suite de cette étude, des modifications sont sur le point d'être apportées aux politiques et directives administratives internes du ministère du Solliciteur général et à la *Loi sur les services correctionnels*, S.R.N.B. 1973, c. C-26, et à son règlement d'application.

76. La *Loi sur les droits de la personne*, S.R.N.B. 1973, c. H-11, protège les employés contre les formes de discrimination prescrites, y compris le harcèlement sexuel.

77. La *Loi sur les services à la famille*, S.R.N.B. 1973, c. F2.2(1980), prévoit un régime complet pour la protection des enfants. Tous les aspects du bien-être des enfants sont prévus dans la Loi et comprennent la santé mentale, émotionnelle et physique de l'enfant, un environnement sécuritaire pour l'enfant, la protection du patrimoine culturel et religieux de l'enfant et la reconnaissance du point de vue et des préférences de l'enfant.

DOCUMENTS ANNEXES⁴

Loi sur l'indemnisation des victimes d'actes criminels, S.R.N.B. 1973, c. C-14, et Règlement 83-86

Loi sur les services correctionnels, S.R.N.B. 1973, c. C-26, et Règlement 84-257

Extraits de la Loi concernant la Loi sur la procédure applicable aux infractions provinciales, chapitre 22, sanctionnée le 20 juin 1990 :

- Modifications à la Loi sur les services correctionnels

- Modification à la Loi sur l'habecas corpus

Loi sur l'habecas corpus, S.R.N.B. 1973, c. H-1 et Règlement 84-62

Loi modifiant la Loi sur l'habecas corpus, c. 25, 16 juin 1977

Loi sur l'Ombudsman, S.R.N.B. 1973, c. O-5

Apprenez à connaître votre Ombudsman (feuille)

Loi sur la Police, S.R.N.B. 1973, c. P-9.2, modifications et Règlements 81-18, 86-49, 86-76 et 91-119

Rapport annuel 1990-1991, Commission de police du Nouveau-Brunswick

⁴ Ces documents sont soumis séparément comme documents de référence.

qui concernent le maintien de l'ordre au Nouveau-Brunswick [par. 22(1)]; et b) celles qui [art. 26]. Les plaintes de la population concernant la conduite d'un membre de la GRC ne relèvent pas de la compétence de la Commission de police du Nouveau-Brunswick, mais de celle du gouvernement du Canada.

Article 14

71. La Loi sur l'indemnisation des victimes d'actes criminels, S.R.N.B. 1973, c. C-14, permet aux personnes suivantes de présenter une demande d'indemnité :

- a) lorsque la victime est tuée, toute personne qui était responsable de l'entretien de la victime au moment où a été causée la blessure qui a provoqué le décès, ou à un moment quelconque par la suite, les personnes à la charge de la victime et les personnes responsables de l'entretien des personnes à la charge de la victime au moment où a été causée la blessure qui a provoqué le décès, ou à un moment quelconque par la suite [par. 4(2)]; et

- b) dans tous les autres cas, la victime et toute autre personne responsable de l'entretien de la victime au moment où a été causée la blessure, la perte ou le dommage matériels, ou à un moment quelconque par la suite.

72. Une indemnité peut être accordée dans les cas suivants : dépenses raisonnables subies ou qui seront vraisemblablement subies par suite de la blessure ou du décès de la victime; perte pécuniaire découlant d'une incapacité qui empêche la victime de travailler; perte pécuniaire subie par les personnes à charge par suite du décès de la victime; douleur et souffrance, lorsque l'indemnité est accordée au bénéfice de la victime; dommages aux effets que la victime avait sur elle, ou perte de ces effets, lorsque l'indemnité est accordée au bénéfice de la victime; perte de biens ou dommages à des biens dans l'une ou l'autre des circonstances suivantes : au cours ou par suite d'une arrestation légale ou d'une tentative d'arrestation légale, de la prévention ou d'une tentative de prévention de la commission d'une infraction, ou d'une intervention visant à venir en aide à un agent de la paix.

73. Les demandes d'ordonnance d'indemnité aux termes de la Loi peuvent être adressées à un juge de la Cour du Banc de la Reine du Nouveau-Brunswick ou, avec l'approbation du Solliciteur général, à n'importe quel juge désigné avec l'accord de celui-ci.

Article 15

74. Outre les dispositions du *Code criminel* fédéral qui empêchent l'admissibilité d'éléments de preuve obtenus par le recours à la torture, les politiques et les lignes directrices du Nouveau-Brunswick prévoient que toute personne doit obtenir lecture de la mise en garde évoquée au regard de l'article 11.

Article 16

75. La Direction des services correctionnels du ministère du Solliciteur général a mené une étude approfondie de ses politiques et procédures institutionnelles dans le but d'examiner les

à la liberté et à la sécurité de sa personne, constitutionnalise le droit, reconnu en Common Law, de garder le silence avant son procès. Par suite de l'application de la Charte, la « mise en garde policière » dont il était fait état au paragraphe 92 du premier rapport du Canada sur la Convention contre la torture ne s'applique plus. Voici le texte de la mise en garde maintenant faite au Nouveau-Brunswick :

1. AU MOMENT DE L'ARRESTATION

Je vous arrête pour _____

2. DROIT DE FAIRE APPEL À UN AVOCAT

Avant que vous disiez quoi que ce soit, j'ai le devoir de vous informer que vous avez le droit de recourir sans délai à l'assistance d'un avocat.

Avez-vous compris?

Si l'avocat de votre choix ne peut se mettre à votre disposition dans un délai raisonnable ou si vous ne pouvez offrir les services d'un avocat, vous avez le droit de vous faire conseiller sans frais et sans délai par un avocat-conseil de l'Aide juridique.

Avez-vous compris?

Que voulez-vous faire de votre droit de consulter un avocat?

MISE EN GARDE

Vous n'êtes pas obligé de rien dire. Vous n'avez rien à espérer d'aucune promesse ou faveur et rien à craindre d'aucune menace, que vous disiez quelque chose ou non; mais tout ce que vous direz peut servir de preuve.

MISE EN GARDE SECONDAIRE

Vous devez bien comprendre que tout ce qu'on a pu vous dire auparavant ne doit pas vous influencer ou vous obliger à dire quoi que ce soit maintenant. Vous n'avez ni à répéter ce que vous êtes senti tenu de dire précédemment, ni à y ajouter qui que ce soit, mais tout ce que vous direz pourra servir de preuve. Comprenez-vous ce qu'on vient de vous dire?

Article 12

69. L'Ombudsman du Nouveau-Brunswick, qui est nommé par l'Assemblée législative du Nouveau-Brunswick, a le pouvoir, en vertu de la *Loi sur l'Ombudsman*, S.R.N.B. 1973, c. O-5, de faire enquête sur les plaintes relatives à des décisions et à des actions d'ordre administratif des fonctionnaires du gouvernement du Nouveau-Brunswick, y compris n'importe lequel de ses organismes, associations ou municipalités. Les services de l'Ombudsman sont gratuits.

70. La *Loi sur la police* énonce la marche à suivre pour les plaintes de la population devant la Commission de police du Nouveau-Brunswick. Il existe deux types de plaintes : a) celles

64. En mai 1991, la *Loi sur la police*, S.R.N.B. 1973, c. P-9.2, a fait l'objet de modifications ayant pour effet de modifier le mandat de la Commission de police du Nouveau-Brunswick. La compétence de celle-ci est limitée aux points suivants :

- a) l'examen et le règlement des plaintes déposées par quiconque relativement à la conduite d'un membre d'un service de police municipal;
 - b) l'examen et le règlement de toute question relative au maintien de l'ordre au Nouveau-Brunswick; et
 - c) l'évaluation des services de police municipaux et régionaux et de la Gendarmerie royale du Canada (GRC) au Nouveau-Brunswick.
65. La responsabilité principale du maintien de l'ordre a été transférée de la Commission de police du Nouveau-Brunswick au Solliciteur général. Les fonctions du Solliciteur général sont doubles :

- a) promouvoir la préservation de la paix, la prévention du crime, le bon fonctionnement des services de police et la mise sur pied de services de police efficaces; et
 - b) coordonner le travail et les efforts des services de police municipaux et régionaux et de la GRC, et s'acquitter du rôle confié au Solliciteur général à l'égard de la GRC en vertu de l'accord conclu entre le gouvernement du Canada et le gouvernement du Nouveau-Brunswick relativement au maintien de l'ordre dans la province.
66. La *Loi sur la police* autorise le Solliciteur général à émettre des lignes directrices et à donner des directives à l'intention de tout service de police du Nouveau-Brunswick. Le ministre du Solliciteur général élabore en ce moment des normes policières uniformes.

Article 11

67. L'article 21 du *Règlement 84-257 de la Loi sur les services correctionnels*, S.R.N.B. 1973, c. c-26, stipule que nul agent ni employé aux termes de la Loi n'a le droit de recourir à la force contre un détenu, sauf circonstances exceptionnelles. Dans de telles circonstances, la force utilisée doit être «raisonnable et non excessive, eu égard à la nature de la menace posée par le détenu, ainsi qu'à toutes autres circonstances de l'affaire».

68. L'article 11 de la Convention contre la torture exige, entre autres choses, que la marche à suivre pour les arrestations soit conçue de manière à éviter tout cas de torture. Dans cette optique, les articles 7 et 10 de la *Charte canadienne des droits et libertés* s'appliquent dans la mesure où ils énoncent certains critères minimums pour les arrestations. Les alinéas 10a) et 10b) de la Charte exigent qu'en cas d'arrestation ou de détention, chacun soit informé promptement des motifs de son arrestation ou de sa détention ainsi que de son droit d'avoir recours sans délai à l'assistance d'un avocat. En 1990, dans la décision *R. c. Hébert*, la Cour suprême du Canada a statué que l'article 7 de la Charte, qui garantit à chacun le droit à la vie,

56. La Loi sur l'ombudsman (*Ombudsman Act*), R.S.N.S. 1989, c. 327, prévoit la possibilité pour toute personne placée sous garde par suite d'une inculpation ou d'une condamnation au regard d'un infraction quelconque et pour tout détenu ou pensionnaire d'un hôpital psychiatrique de porter plainte en privé ou par écrit sur toute question.

Article 13

57. Aux termes de la Loi, l'Ombudsman a le pouvoir d'enquêter sur toute allégation formulée par n'importe quelle personne et de faire rapport aux autorités ou à la population comme bon lui semble.

58. En 1991, l'Ombudsman a placé une affiche dans tous les centres correctionnels de la province pour inviter les détenus à le saisir de toute plainte qu'ils pourraient vouloir déposer. Bien que le nombre de plaintes soit passé de 30 en 1990 à 52 en 1991, les rapports d'enquête n'ont pas révélé que le personnel des services correctionnels avait mal agi.

Article 16

59. Les règlements adoptés en vertu de la *Loi sur la police (Police Act)* énoncent la marche à suivre pour porter plainte officiellement contre un agent de police. Il est également possible d'interjeter appel devant une commission de révision indépendante de la police.

4. NOUVEAU-BRUNSWICK

60. Le présent document rend compte des changements survenus depuis le premier rapport et fournit des renseignements complémentaires sur l'adhésion du Nouveau-Brunswick à la *Convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants*.

61. Le Nouveau-Brunswick souscrit aux principes de la Convention contre la torture dont il applique d'ailleurs intégralement les dispositions dans sa sphère de compétence.

Article 2

62. Absolument rien dans les lois, les règlements et les politiques du Nouveau-Brunswick ne justifie le recours à la torture. Nul fonctionnaire ni organisme du Nouveau-Brunswick n'a le droit ou n'est autorisé à avoir recours à la torture ou à en justifier l'usage.

63. L'application des dispositions du *Code criminel* du Canada relève conjointement du ministère de la Justice/Procureur général et du ministère du Solliciteur général. Le ministère de la Justice/Procureur général a autorité sur les poursuites judiciaires, les services juridiques gouvernementaux et la réforme du droit. Le ministère du Solliciteur général régit les services policiers et correctionnels.

les personnes détenues dans des centres correctionnels provinciaux par suite d'un renvoi ordonné par un tribunal en attendant leur procès. Dans la troisième colonne, ce sont les personnes qui se trouvent dans des centres correctionnels provinciaux après avoir été condamnées par un tribunal. Le premier chiffre de chaque colonne correspond au nombre de personnes qui ont été dans un centre correctionnel provincial durant l'année et dans la catégorie en question. Le deuxième chiffre représente le nombre d'heures passées par ces personnes dans un centre correctionnel provincial.

Population des prisons

Année	Détention provisoire	Renvoi	Condamnation
1988	1696/1791	114/2789	1430/26140
1989	1529/1691	127/3096	1301/27920
1990	1750/1776	183/4548	1344/32186
1991	2077/2158	188/5319	1318/31795

52. Durant la période de rapport, aucune poursuite n'a été intentée à l'Ile-du-Prince-Edouard pour des infractions liées à la torture introduites dans le *Code Criminel*.

3. NOUVELLE-ÉCOSSE

Article 2

53. La procédure d'admission des patients et de prestation des soins dans les établissements psychiatriques est régie par la *Loi sur les hôpitaux (Hospitals Act)*, R.S.N.S. 1989, c. 208.

Article 10

54. Pour ce qui est du personnel des Services correctionnels, le ministère du Solliciteur général donne un cours de formation de base obligatoire à tous les agents de correction ainsi que des cours spécialisés de formation en matière d'intervention d'urgence sans violence, d'intervention d'urgence verbale, d'intervention auprès de personnes qui menacent de se suicider, de relations entre le personnel et les délinquants et d'initiation au droit des services correctionnels.

Article 11

55. Le ministère du Solliciteur général a entrepris de communiquer des normes à tous les services de police de la province de Nouvelle-Écosse. Ces normes, de même que les politiques et procédures connexes, visent à assurer l'uniformité des méthodes de travail de tous les agents de police de la Nouvelle-Écosse. Tous les centres correctionnels de la province ont reçu des exemplaires d'un guide des politiques et procédures publié le 31 janvier 1991.

tâches autres que la garde des pensionnaires en attendant l'issue de l'enquête. Une enquête interne a lieu dans tous les cas. De plus, si le jeune est âgé de moins de 16 ans, l'affaire est renvoyée à la Division du bien-être de l'enfance qui procède à une enquête indépendante. Si l'enquête soulève la possibilité d'accusations au criminel, l'affaire est renvoyée à la police qui mène également une enquête indépendante. Enfin, selon la nature de l'allégation, le jeune reçoit de l'aide pour entrer en communication avec un avocat, un travailleur social ou un organisme tel que la Commission des droits de la personne.

2. ÎLE-DU-PRINCE-ÉDOUARD

Première partie — Renseignements sur les mesures et les faits nouveaux relatifs à la mise en oeuvre de la Convention

48. Bien qu'une nouvelle *Loi sur les services correctionnels (Correctional Services Act)* soit en cours de planification pour remplacer l'actuelle *Loi sur les prisons (Jails Act)*, R.S.P.E.I. 1988, c. J-1, dont il était fait état dans notre dernier rapport, il ne s'est produit, depuis le dépôt du premier rapport du Canada, aucun fait nouveau relatif à la mise en oeuvre de la Convention.

49. À l'Île-du-Prince-Édouard, les agents de correction sont censés avoir reçu la formation de base des agents de correction ou avoir une expérience pertinente, ou les deux, avant d'être embauchés. La formation en question, maintenant offerte par le Justice Institute du collage Holland de Charlottetown, porte notamment sur les droits des détenus, la façon de traiter les détenus, le recours à la force, etc. L'agent de correction suit un cours d'initiation au travail peu après son embauche et reçoit par la suite de la formation en cours d'emploi.

50. Les policiers municipaux embauchés à l'Île-du-Prince-Édouard doivent désormais être diplômés du programme de formation de 40 semaines de l'Académie de police de l'Atlantique, lequel comprend 15 semaines de formation en cours d'emploi, ou justifier d'une formation équivalente acquise ailleurs. Cette formation porte notamment sur le bon usage de l'autorité, le recours à la force, les droits des détenus et d'autres questions semblables.

Deuxième partie — Renseignements complémentaires demandés par le Comité

51. Des statistiques sur la population des centres correctionnels provinciaux de l'Île-du-Prince-Édouard pour les quatre années comprises entre 1988 et 1991 sont présentées ci-bas. La première colonne renferme des renseignements sur les personnes qui se trouvaient en détention provisoire (personnes arrêtées par la police et détenues avant de comparaître en cour, personnes ayant contrevenu aux conditions de libération conditionnelle d'un établissement fédéral, personnes détenues par les services de l'immigration). La deuxième colonne concerne

Dans la plupart des provinces du Canada les lois sont adoptées en anglais seulement et n'ont pas de titre officiel français. Dans le présent rapport, afin de faciliter la compréhension, les titres de ces lois seront traduits en français et le titre officiel anglais sera inséré entre parenthèses.

42. Dans l'arrêt *R. c. Goltz*, la Cour a également jugé que l'article 12 n'était pas violé par une peine impérative d'emprisonnement de sept jours pour avoir conduit sciemment un véhicule automobile sous le coup d'une interdiction. Les facteurs qui ont influé sur la conclusion de la Cour étaient que le prévenu devait commettre l'infraction «sciemment», l'obligation d'assurer la sécurité publique et le fait que l'ordonnance préalable d'interdiction de conduire était assujettie à de nombreuses mesures de sauvegarde.

TROISIÈME PARTIE : MESURES ADOPTÉES PAR LES GOUVERNEMENTS DES PROVINCES²

1. TERRE-NEUVE

43. Les présents renseignements constituent une mise à jour, à décembre 1991, de l'information contenue dans le premier rapport du Canada.

44. La Division des services correctionnels pour les jeunes du ministère des Services sociaux a entrepris un important travail d'élaboration de politiques qui a son importance pour les articles 10, 11 et 13 de la Convention.

Article 10

45. Un certain nombre de membres du personnel ont reçu la formation nécessaire pour donner un cours sur l'intervention d'urgence non violente. Ce cours est obligatoire pour tout le personnel des établissements de garde de jeunes. D'autres cours de formation supplémentaires sont également disponibles. La Division des services correctionnels pour les jeunes et le ministère appuient d'une manière générale ceux qui ne sont pas obligatoires.

Article 11

46. L'établissement de garde en milieu fermé est en voie d'être relogé dans des locaux modernes comprenant, entre autres, un gymnase et des terrains de tennis, des laboratoires de science et d'informatique ainsi que des ateliers de réparation de carrosseries et de travail du métal auxquels les jeunes pensionnaires n'avaient pas accès auparavant.

Article 13

47. Le guide des services correctionnels destinés aux jeunes (*Youth Corrections Policy Manual*) explique les mécanismes qui sont enclenchés lorsqu'un pensionnaire allègue avoir fait l'objet de mauvais traitements de la part d'un membre du personnel ou d'un autre pensionnaire. Si l'allégation vise un membre du personnel, celui-ci se voit affecter à des

- de porter plainte devant l'Enquêteur correctionnel (CD 081, Appendice 7, paragraphe 38);

- d'avoir recours à la correspondance privilégiée pour communiquer avec certains officiels désignés (CD 085, Appendice 8);

- de s'entretenir sous le sceau du secret avec un avocat (CD 084, Appendice 9).

37. En ce qui concerne la procédure pour les griefs et les plaintes, voir «Les droits et responsabilités des détenus et des détenues», aux pp. 17 et 18, Appendice 10.

Article 14

38. Lors de l'examen du premier rapport du Canada, le Comité a demandé des

éclaircissements sur le point de savoir si l'indemnisation de la victime était garantie dans les cas où l'agresseur était acquitté faute de preuves. Les indemnisations accordées par les commissions provinciales d'indemnisation des victimes d'actes criminels ne sont pas fonction d'une condamnation, et, par conséquent, la victime peut quand même avoir droit à une indemnité en cas d'acquiescement de l'accusé.

39. En ce qui concerne la réadaptation des victimes de la torture, le Canadian Centre for Victims of Torture (CCVT), situé à Toronto, a déjà été mentionné sous l'article 10. Il compte parmi ses activités un service d'aiguillage pour les victimes de torture, les dirigeant vers un réseau spécial de coordination de médecins d'expérience, de psychiatres et d'autres spécialistes, un programme de formation en langue anglaise spécialement conçu pour les victimes de torture et un programme de soutien communautaire grâce à un réseau de bénévoles. Un rapport exposant plus en détail quelles sont les activités du CCVT est joint à l'Appendice 11.

40. La Canadian Association for the Survivors of Torture administre des programmes semblables à Vancouver.

Article 16

41. Comme il est dit dans le premier rapport déposé par le Canada, la Cour suprême du Canada a jugé qu'il y a violation de la protection contre tous traitements ou peines cruels et injustes aux termes de l'article 12 de la Charte dans le cas d'un comportement qui est abusif au point d'en être révoltant et de porter atteinte aux normes les plus élémentaires de la décence. Dans l'arrêt *R. c. Luxton*, la Cour a jugé que la peine obligatoire d'emprisonnement à perpétuité, sans admissibilité à la libération conditionnelle durant vingt-cinq ans, applicable au meurtre au premier degré (c.-à-d. à l'assassinat, soit l'homicide prémédité et délibéré) n'enfreignait pas l'article 12 de la Charte. Selon la Cour, cette peine impérative, quoique sévère, était méritée et reflétait le fait que le meurtre au premier degré est le crime le plus grave que sanctionne le droit pénal et le plus répréhensible qui soit.

32. La durée de la formation d'orientation varie d'une semaine pour les cadres qui n'ont aucun contact avec les délinquants à douze semaines pour les agents correctionnels. Le personnel médical reçoit une formation de huit semaines. Des cours de recyclage sont offerts régulièrement.

Divers

33. Le Canadian Centre for Victims of Torture (le CCVT) a été fondé en 1983 en réponse aux besoins particuliers des victimes de la torture et de leurs familles et afin que tous, au Canada comme à l'étranger, prennent de plus en plus conscience de la torture et de ses effets au Canada. Le gouvernement fédéral contribue financièrement au CCVT par l'entremise du Programme d'établissement et d'adaptation des immigrants et du Programme de cours de langue aux fins de l'établissement des immigrants. Parmi les nombreuses activités du CCVT, on retrouve des programmes de formation pour les agents des visas et les membres de la Commission de l'immigration et du statut de réfugié récemment nommés, sur la pratique de la torture, ses effets sur ses victimes et sur la façon dont elle se manifeste chez celles-ci.

Article 13

Gendarmerie royale du Canada

34. *La Loi modifiant la Loi sur la Gendarmerie royale du Canada*, proclamée en vigueur en 1988, établit une procédure par laquelle le simple citoyen peut porter plainte au sujet du comportement des agents de la GRC dans l'exercice de leurs fonctions. Elle institue également la Commission des plaintes du public (CPP), laquelle est indépendante de la GRC. Cette procédure a été instituée afin que les plaintes portées par la population soient appréciées équitablement et impartialement et que, lors de leur examen, il soit tenu compte qu'il est d'intérêt public de faire respecter la loi de manière équitable et régulière. Chacune des étapes de la procédure prévue pour porter plainte est décrite à l'Appendice 6.

35. La Commission des plaintes du public a tenu cinq audiences depuis janvier 1990, principalement sur des questions «d'abus de la force». Quatre affaires portaient sur le recours à la force au moment de l'arrestation et l'une sur le recours à la force contre l'auteur de la plainte alors qu'il était en garde à vue. Dans trois de ces affaires, la Commission a conclu qu'il y avait effectivement eu «abus de la force». Dans une autre, elle a conclu que la plainte n'était pas fondée. La dernière affaire est toujours en voie d'examen. Par suite des recommandations de la Commission dans ces affaires, la GRC a revu ses politiques et la formation qu'elle donne sur l'emploi de la force dans des domaines spécifiques.

Service correctionnel du Canada

36. Tous les détenus jouissent des droits suivants, conformément aux Directives du Commissaire (les DC) :

- de se prévaloir de la procédure de règlement des griefs de leur établissement (DC 081, Appendice 7);

Article 10

Gendarmerie royale du Canada

26. Chaque recrue de la GRC reçoit une formation sur l'emploi de la force; les cours suivants sont dispensés : «Comment traiter les prisonniers», «Techniques d'interrogatoire», «Contrôle des armes à feu» et «Droit criminel». On enseigne aux recrues de garder constamment à l'esprit la politique de la GRC relativement à l'emploi de la force, laquelle est fondée essentiellement sur deux principes fondamentaux :

- 1) Éviter le recours à la force, si possible, dans la poursuite des objectifs de répression des infractions;
- 2) Se restreindre, c.-à-d. n'utiliser que la force nécessaire et de façon raisonnable.

27. À la suite de la ratification par le Canada de la Convention contre la torture et des modifications qu'elle entraîna au *Code criminel* pour y incriminer la torture comme infraction spécifique, une session sur la torture a été insérée dans le cours «Droit pénal», sous la rubrique «Arrestation, libération et détention».

28. Les recrues reçoivent également une formation sur la *Charte canadienne des droits et libertés*. On y insiste particulièrement sur les droits garantis aux termes des articles 7 à 14.

29. En outre, compte tenu de l'importance de la résolution concernant les «Principes de base relatifs au recours à la force et à l'utilisation des armes à feu par les responsables de l'application des lois», adoptée en septembre 1990 par le huitième Congrès des Nations Unies pour la prévention du crime et le traitement des délinquants, et la résolution concernant le «Code de conduite pour les responsables de l'application des lois», adoptée par l'Assemblée générale des Nations Unies en 1979, le Canada publiera un document contenant les deux instruments, ainsi qu'un commentaire sur chacun d'eux. Ce document sera diffusé auprès des responsables de l'application des lois ainsi que des individus et organisations intéressés, marquant un pas important vers la mise en vigueur de ces instruments.

Service correctionnel du Canada

30. Tous les employés du SCC suivent des cours d'orientation et de recyclage portant sur l'interdiction de la torture et des actes de ce genre. Les cours offrent une formation sur la politique concernant le recours à la force et ses applications. Il faut observer que tous ces cours insistent sur la politique globale du SCC, le devoir d'agir équitablement.

31. Les employés sont instruits de l'interprétation et de l'application des dispositions du *Code criminel* et des directives, normes et principes directeurs se rapportant à l'usage de la force, par exemple, par des cours sur l'arrestation, le contrôle et l'emploi des armes et des agents chimiques (voir CD 605, Appendice 5). De même, ils reçoivent une formation portant sur l'interprétation et l'application de la législation interdisant la torture et autres peines cruelles, inhumaines ou dégradantes (p. ex., sur la *Charte canadienne des droits et libertés* et sur la *Loi canadienne sur les droits de la personne*).

torture. De même, en vertu de l'article 26 du Code : «Quiconque est autorisé par la loi à employer la force est criminellement responsable de tout excès de force, selon la nature et la qualité de l'acte qui constitue l'excès».

21. Le Comité a également réclamé des statistiques sur les poursuites intentées au regard de la torture aux termes du *Code criminel* du Canada. Le Centre canadien de la statistique juridique ne dispose pas de dossiers sur les condamnations consécutives à des infractions particulières au *Code criminel*. Quoiqu'il semble qu'il n'y ait pas eu de poursuites au titre de la torture, il est difficile d'établir ce point de manière décisive, les poursuites pour infractions criminelles étant de compétence provinciale.

Article 6

22. Le premier rapport du Canada signalait que le Manuel des opérations de la GRC était alors en voie d'être mis à jour en ce qui concernait les apartides. Le Manuel des opérations porte maintenant que l'apartide peut communiquer avec le représentant du pays dans lequel il ou elle réside normalement. (GRC, Manuel des opérations, Chapitre III.2, Appendice 4.)

Article 8

23. Un accord multilatéral auquel le Canada est partie et qui prévoit l'extradition dans le cas de certaines infractions a l'effet d'un accord obligatoire aux termes de la *Loi sur l'extradition*. Il en est ainsi indépendamment de l'existence ou non d'un traité en vigueur entre le Canada et l'Etat cocratant et indépendamment de la promulgation expresse du traité comme ayant force de loi. Ainsi le Canada peut avoir recours à la Convention contre la torture comme fondement d'une demande d'extradition faite à un des autres Etats parties.

Article 9

24. La *Loi sur l'entraide juridique en matière criminelle* a été proclamée en vigueur au Canada le 1^{er} octobre 1988. La Loi institue un cadre juridique pour l'exécution des traités entre le Canada et les autres Etats en vue de faciliter la coopération en matière d'enquêtes et de poursuites criminelles. La Loi prévoit cinq formes d'entraide de base : i) la réunion d'éléments de preuve, y compris la consignation de dépositions et de témoignages; ii) l'exécution de mandats de perquisition; iii) le transfèrement provisoire de détenus pour fins de témoignages ou d'autres formes d'aide; iv) le prêt de pièces à conviction; et v) l'entraide relativement aux fruits ou produits de la criminalité.

25. Depuis 1990, le Canada a conclu des traités en vertu de la nouvelle loi sur l'entraide judiciaire avec les Etats-Unis, l'Australie, les Bahamas, le Royaume-Uni, le Mexique, Hong Kong et la France. Un traité conclu avec les Pays-Bas est entré en vigueur le 1^{er} mai 1992. D'autres traités, avec la Suisse, l'Autriche, le Portugal, la Corée, le Brésil et l'Allemagne sont en cours de négociation.

12 août 1949. En s'engageant à se conformer aux Protocoles additionnels I et II, le Canada étend sa protection contre la torture et autres traitements cruels aux conflits tant internationaux qu'internes.

Article 3

17. Le 26 septembre 1991, la Cour suprême du Canada a jugé que la remise de deux fugitifs aux États-Unis, où la peine de mort n'a pas été abolie, n'enfreignait pas la *Charte canadienne des droits et libertés*. (Voir les arrêts *Kindler c. Canada (Ministre de la Justice)* et *Ng c. Canada (Ministre de la Justice)* à l'Appendice 3.) Le litige tenait à ce que le ministre canadien de la Justice n'avait pas demandé des assurances aux États-Unis, en vertu de l'art. 25 de la *Loi sur l'extradition*, que la peine capitale ne serait pas infligée aux extradés.

18. La Cour a jugé que la législation sur l'extradition et son application par le Ministre étaient régies par l'article 7 de la Charte : le droit à la vie, à la liberté et à la sécurité de sa personne, auquel il ne peut être porté atteinte qu'en conformité avec les principes de justice fondamentale. De plus, une extradition entrèinderait l'article 7 si l'infliction de la peine par l'État requérant heurterait la conscience canadienne. La Cour a fait observer que la torture est une peine à ce point révoltante aux yeux de la société canadienne que l'extradition serait toujours considérée comme inacceptable. En ce qui concernait l'existence de la peine capitale sur le territoire de l'État requérant, chaque cas devait être décidé en fonction de la situation de fait particulière. Dans les circonstances portées à la connaissance de la Cour, l'extradition des individus réclamés aux États-Unis ne violait pas l'article 7 de la Charte parce que les accusés relèveraient alors d'un système de droit émanant d'un gouvernement démocratique et comportant de solides garanties, inscrites dans une déclaration des droits. Comme autres motifs qui furent invoqués, il y avait la nécessité d'assurer l'effectivité des accords d'extradition conclus avec les autres pays, le danger que le Canada ne devienne un sanctuaire pour tous ceux qui chercheraient à échapper aux sanctions légales en vigueur aux États-Unis, et la nature brutale et révoltante des crimes en cause.

19. La Cour a également jugé que la législation sur l'extradition et les actes accomplis par le Ministre en vertu de cette législation ne pouvaient être qualifiés de peine cruelle et inusitée aux termes de l'article 12 de la Charte canadienne. Il en était ainsi parce que la peine à laquelle les extradés pourraient ultimement se voir condamnés n'était pas infligée par le gouvernement du Canada, mais par un autre État. Ainsi ce n'était que sur l'article 7 de la Charte que l'on pouvait se fonder pour contester les ordonnances d'extradition.

Article 4

20. Au moment de la présentation du premier rapport du Canada, le Comité s'est expressément enquis des conséquences juridiques qu'entraînerait la mort d'un détenu par suite d'un usage de la force par un agent du service correctionnel. À cet égard, l'article 25 du *Code criminel* stipule que si un agent de la paix (ce qui inclut les membres du service correctionnel) agit en s'appuyant sur des motifs raisonnables, il peut avoir recours à la force nécessaire pour appliquer ou faire respecter la loi. La force nécessaire ne saurait, évidemment, inclure la

11. Cependant, il faut observer qu'en vertu du droit constitutionnel, aucune autorité provinciale ne peut s'immiscer dans la gestion interne de la GRC, laquelle est l'apanage du Commissaire de la GRC, qui répond au Solliciteur général fédéral. Cela signifie que les sanctions disciplinaires qui pourraient être prises contre des membres de la GRC, qu'ils agissent à titre d'agents fédéraux ou provinciaux, est exclusivement du ressort fédéral.

Les services correctionnels

12. La responsabilité des services correctionnels pour adultes est partagée entre le gouvernement fédéral, les dix gouvernements provinciaux et les deux administrations territoriales, de sorte qu'au Canada il y a, en fait, treize systèmes correctionnels. (Le régime correctionnel appliqué aux mineurs, quoique régi par la *Loi sur les jeunes contrevenants* fédérale, est administré par les seuls provinces et territoires.)

13. En vertu de la *Loi constitutionnelle de 1867*, le gouvernement fédéral est autorisé à établir et à administrer des pénitenciers où sont incarcérés les délinquants condamnés à des peines de deux ans ou plus. Par ailleurs, les provinces ont la responsabilité de l'administration des établissements carcéraux destinés aux condamnés purgeant des peines de moins de deux ans ainsi qu'aux prévenus qui se sont vu refuser la mise en liberté assortie d'un cautionnement et qui attendent leur procès.

14. C'est au Service correctionnel du Canada (le SCC) qu'est conférée la responsabilité de l'application des peines fédérales (soit deux ans ou plus). Cette responsabilité inclut tant l'administration des établissements des divers niveaux de sécurité que la supervision des délinquants en libération conditionnelle à l'extérieur de ces établissements.

DEUXIÈME PARTIE : MESURES ADOPTÉES PAR LE GOUVERNEMENT DU CANADA

Article 2

15. Le premier rapport du Canada a énuméré une série de mesures constitutionnelles, législatives, réglementaires et administratives visant à prévenir la torture. Outre ces dispositions, deux développements nouveaux méritent une attention particulière. En premier lieu, l'article 7 (3.71) du *Code criminel* (voir l'Appendice 2), entré en vigueur le 16 septembre 1987, incrimine les crimes de guerre et les crimes contre l'humanité à titre d'actes criminels. Les comportements qualifiés de torture aux termes de la Convention peuvent également constituer des crimes contre l'humanité ou des crimes de guerre, dans certaines circonstances, et, par conséquent, être également punissables aux termes de cet article du *Code criminel*. En vertu de l'article 7(3.4), la défense d'obéissance à un pouvoir *de facto* n'est plus recevable.

16. En second lieu, la reconnaissance par le Canada que les victimes des conflits armés doivent pouvoir profiter d'une protection contre la torture et autres traitements cruels, aux termes des Conventions de Genève du 12 août 1949, a été accentuée par la ratification par le Canada, le 20 novembre 1990, des Protocoles additionnels aux Conventions de Genève du

Charte garantit des libertés fondamentales et offre des garanties juridiques, qui ont été décrites dans la première partie et la deuxième partie, article 2, du premier rapport du Canada.

Le droit international et le Canada

6. Au Canada, le droit international conventionnel ne fait pas automatiquement partie intégrante du droit interne. Plutôt, les dispositions d'un traité doivent être reçues en droit interne soit par l'adoption d'une loi qui donne au traité force de loi, soit par des modifications apportées au droit interne, si nécessaire, afin de le rendre conforme au traité. La mise en oeuvre d'un traité dont les dispositions sont de la compétence de l'un ou de l'autre ordre de gouvernement, ou des deux, exige l'intervention du Parlement canadien, des corps législatifs provinciaux et souvent, également, des assemblées législatives territoriales.

7. Comme le Parlement fédéral ne dispose pas du pouvoir de donner un effet législatif à toutes les obligations que le Canada a assumées envers la communauté internationale en ratifiant la Convention, des consultations intensives entre le gouvernement fédéral et les gouvernements provinciaux furent nécessaires. Au cours de ces consultations, les gouvernements concernés s'engagèrent à assurer le respect des dispositions de la Convention qui relèvent de leurs compétences législatives exclusives.

La structure constitutionnelle du Canada en ce qui concerne le personnel des forces de sécurité

8. Cette section indique quelle est la responsabilité constitutionnelle des gouvernements fédéral et provinciaux du Canada en ce qui concerne le personnel des forces de sécurité.

La Gendarmerie royale du Canada

9. Au Canada, le gouvernement fédéral et les gouvernements provinciaux se partagent la responsabilité de la répression des infractions à la loi. La Gendarmerie royale du Canada (la GRC), instituée en vertu de la *Loi sur la Gendarmerie royale du Canada*, est une force de police fédérale, autorisée à faire respecter les lois fédérales partout au Canada. Cependant, à titre de force de police fédérale, la GRC ne peut réprimer les infractions aux lois provinciales ou municipales à moins d'être explicitement autorisée à le faire par la législation provinciale. Il en est ainsi parce que c'est aux provinces qu'est dévolue la responsabilité de faire respecter toutes les lois d'application générale à l'intérieur de leurs limites territoriales. En ce qui concerne le droit pénal, il y a superposition d'autorité, en ce sens que les gouvernements fédéral et provinciaux peuvent réprimer les infractions au *Code criminel*, qui est de droit fédéral.

10. Les deux territoires et toutes les provinces, l'Ontario et le Québec exceptés (lesquels ont constitué leurs propres forces de police provinciales), ont conclu des arrangements contractuels avec le gouvernement fédéral en vertu desquels la GRC agit à titre de force de police provinciale, et municipale dans certains cas. À ce titre, la GRC réprime les infractions au droit provincial, à la réglementation municipale dans certains cas, et au *Code criminel*.

INTRODUCTION

1. La Convention (des Nations Unies) contre la torture et autres peines ou traitements cruels, inhumains ou dégradants a été ratifiée par le Canada le 24 juin 1987. Ce second rapport du Canada aux termes de la Convention couvre la période allant du 1^{er} avril 1988 au 31 décembre 1991. Dans sa première partie, il est donné un aperçu général de la structure constitutionnelle du Canada en ce qu'elle se rapporte à la Convention et, dans ses deuxième, troisième et quatrième parties, sont exposées les mesures prises, depuis le premier rapport, aux niveaux fédéral, provincial et territorial pour donner effet aux dispositions de la Convention.

PREMIÈRE PARTIE : INFORMATIONS D'ORDRE GÉNÉRAL

La structure constitutionnelle du Canada — Généralités

2. Le Canada est un Etat fédéral formé de dix provinces et de deux territoires. En vertu de la *Loi constitutionnelle de 1867* et des modifications qui y ont été apportées, les pouvoirs législatifs sont matériellement partagés entre le gouvernement fédéral et les dix gouvernements provinciaux. Par exemple, la Constitution du Canada donne à chaque province, sur son territoire, compétence en matière d'administration de la justice, de propriété et de droits civils, et d'hôpitaux. Comme exemples de matières relevant de la compétence fédérale, il y a le droit criminel et la procédure en matière criminelle, la naturalisation et les aubains. De plus, le gouvernement fédéral détient un pouvoir général résiduel de légiférer pour la paix, l'ordre et le bon gouvernement du Canada.

3. Le Canada possède également deux territoires dans lesquels le gouvernement fédéral exerce ses compétences propres et celles dévolues aux gouvernements provinciaux. Cependant, le Parlement fédéral a délégué à ces territoires plusieurs pouvoirs qu'exercent les assemblées législatives provinciales.

4. En raison de ce partage des pouvoirs législatifs, les gouvernements fédéral, provinciaux et territoriaux interviennent tous dans la mise en oeuvre des dispositions de la Convention contre la torture. (Comme le rôle du personnel des forces de sécurité est particulièrement important au regard de cette Convention, une explication détaillée est donnée ci-dessous sur la façon dont les gouvernements fédéral et provinciaux se partagent les responsabilités dans ce domaine.)

5. En outre, le 17 avril 1982, une *Charte canadienne des droits et libertés* a été insérée dans la Constitution canadienne par la *Loi constitutionnelle de 1982* (Appendice 1¹). La

¹ Les appendices mentionnés dans le présent rapport ne sont pas attachés au rapport. Ils seront soumis séparément comme documents de référence à l'intention des membres du Comité contre la torture.

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* Ordre géographique d'est en ouest

AVANT-PROPOS

La Convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants a été adoptée par l'Assemblée générale des Nations Unies le 10 décembre 1984. Ayant obtenu l'accord des gouvernements des provinces et des territoires, le gouvernement du Canada a signé la Convention le 23 août 1985 et l'a ratifiée le 24 juin 1987. La Convention est entrée en vigueur pour le Canada le 24 juillet 1987. Au 31 décembre 1991, 64 Etats étaient devenus parties à la Convention.

La Convention oblige les Etats parties à empêcher la torture dans les territoires sous leur juridiction et à faire de la torture une infraction au regard de leur droit pénal. Aucune circonstance ne peut être invoquée pour justifier la torture. Le traité prévoit l'extradition des responsables. En cas de non-extradition, l'Etat où l'auteur d'une telle infraction est découvert doit poursuivre ce dernier en justice sous certaines conditions. Les Etats parties doivent aussi prévoir le droit des victimes à l'indemnisation et à la réadaptation.

Un Comité contre la torture a été constitué pour veiller à l'application de la Convention. Le Comité est composé de dix experts siégeant à titre personnel. Les membres du Comité sont élus par les Etats parties, compte tenu d'une répartition géographique équitable. Un Canadien, M. Peter Thomas Burns, est membre du Comité.

En vertu de l'article 20 de la Convention, le Comité a des pouvoirs étendus concernant l'examen des renseignements crédibles indiquant que la torture est pratiquée systématiquement dans un Etat partie, à condition que cet Etat n'ait pas rejeté cette disposition lors de la ratification de la Convention. Le Canada a accepté cette disposition. De plus, ayant obtenu l'accord de tous les gouvernements provinciaux et territoriaux, le gouvernement du Canada a accepté les procédures de plaintes des particuliers et des Etats prévues aux articles 21 et 22 de la Convention. Ces procédures sont facultatives. Au 31 décembre 1991, 29 Etats avaient accepté les procédures prévues à l'article 21 et 28 avaient accepté celles qui sont prévues à l'article 22.

Les Etats parties doivent présenter au Comité contre la torture des rapports concernant les mesures qu'ils ont prises pour assurer l'application de la Convention. Le rapport initial du Canada a été présenté le 16 janvier 1989. Il a été examiné par le Comité contre la torture en novembre 1989, en présence d'une délégation canadienne. Le présent rapport est le deuxième à être présenté par le Canada en vertu de la Convention. Il est le fruit d'une étroite collaboration entre le gouvernement fédéral et les gouvernements des provinces et des territoires, la plupart des gouvernements ayant préparé leur propre section. La première partie et la section portant sur le gouvernement du Canada ont été préparées par le ministère de la Justice du Canada.

Le rapport est publié au Canada dans le cadre du programme de sensibilisation aux droits de la personne de Multiculturalisme et Citoyenneté Canada. On peut en obtenir des exemplaires en s'adressant à la Direction générale des Communications ou à la Direction des droits de la personne de ce ministère ou à l'un ou l'autre de ses bureaux régionaux.

Le titre de ce rapport est emprunté à un document des Nations Unies intitulé «Mise hors la loi d'une abomination séculaire : la TORTURE». Département de l'information, Nations Unies, New York, 1985.

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MISE HORS LA LOI D'UNE ABOMINATION SÉCULAIRE : LA TORTURE
CONVENTION CONTRE LA TORTURE ET AUTRES PEINES OU
TRAITEMENTS CRUELS, INHUMAINS OU DÉGRADANTS

DEUXIÈME RAPPORT DU CANADA

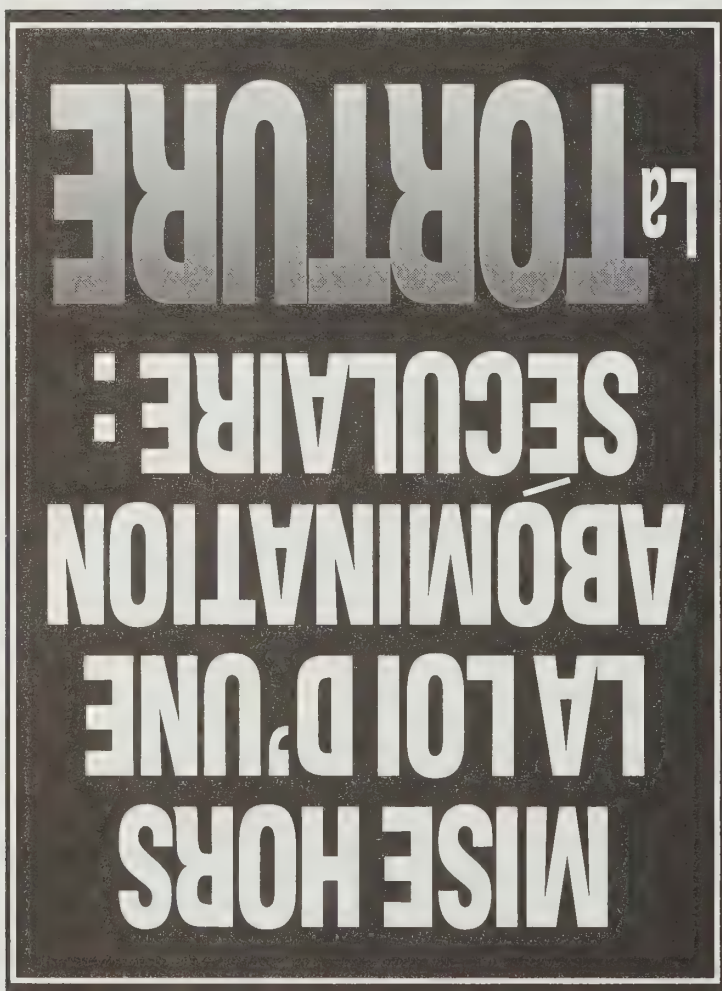
couvrant la période
du 1^{er} avril 1988
au 31 décembre 1991

MULTICULTURALISME ET CITOYENNETÉ CANADA

OTTAWA

DEUXIÈME RAPPORT DU CANADA

Convention contre la torture
et autres peines
ou traitements cruels,
inhumains ou dégradants





Government of Canada /
Gouvernement du Canada

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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Fourth Report of Canada

Covering the period
April 1996–April 2000

Canada

FOREWORD

The *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* was adopted by the United General Assembly on December 10, 1984. Canada ratified the Convention on June 24, 1987.

States Parties are required to report to the United Nations on measures they have taken to give effect to the Convention. The present report was submitted to the Committee against Torture in August 2002 and covers the period of April 1996 to April 2000. It was prepared in close collaboration by the federal, provincial and territorial governments and describes measures and initiatives taken by these governments with respect to the Convention.

The report is published so that it can be made available to interested groups and individuals. Through its publication, it is hoped that Canadians will be encouraged to become familiar with the measures adopted in Canada to ensure the implementation of the Convention and to broaden their understanding of the obligations contracted by Canada through ratification of this important international treaty.

Copies of the report, in both official languages, may be obtained free of charge from the Human Rights Program, or at any regional office of the Department of Canadian Heritage. This report is also available on the Human Rights Program website at: <http://www.pch.gc.ca/progs/pdp-hrp/>.



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List of Acronyms

APEC	— Asia-Pacific Economic Cooperation
BC	— British Columbia
CAPRA	— Clients, Analysis, Partnerships, Response, Assessment
CCRA	— <i>Corrections and Conditional Release Act</i> (Canada)
CCVT	— Canadian Centre for Victims of Torture
CF	— Canadian Forces
CIC	— Citizenship and Immigration Canada
CME	— Continuing Medical Education (British Columbia)
CTP	— Cadet Training Program (RCMP)
FGM	— female genital mutilation
ICCPR	— International Covenant on Civil and Political Rights
ICTR	— International Criminal Tribunal for Rwanda
ICTY	— International Criminal Tribunal for the Former Yugoslavia
IERT	— Institutional Emergency Response Teams
II&SO	— Investigation, Inspection and Standards Office (British Columbia)
IRB	— Immigration and Refugee Board
LOAC	— <i>The Law of Armed Conflict at the Operational and Tactical Level</i>
NDA	— <i>National Defence Act</i> (Canada)
NGO	— non-governmental organization
NRC	— National Review Committee
OPP	— Ontario Provincial Police
PDRCC	— Post Determination Refugee Claimants in Canada
PEI	— Prince Edward Island
PFW	— Prison for Women
PRRA	— Pre-Removal Risk Assessment
PSA	— <i>Police Services Act</i> (Ontario)
RCMP	— Royal Canadian Mounted Police
SHU	— Special Handling Unit
UN	— United Nations

Introduction

1. On June 24, 1987, Canada ratified the United Nations *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (the Convention or the Convention against Torture). This is Canada's Fourth Report under the Convention, covering the period from April 1, 1996 to April 1, 2000 (which occasional references to developments of special interest which occurred since that time). Part I contains general information on Canada's constitutional structure as it relates to the Convention. Part II updates from the Third Report the measures undertaken at the federal level to give effect to the provisions of the Convention and includes the response of the federal government to the concluding observations of the Committee after the presentation of Canada's Third Report in November 2000. Parts III and IV include an update on measures undertaken at the provincial and territorial levels.
2. This report reflects the main changes in federal, provincial and territorial policies, laws and programs since the submission of Canada's Third Report under the Convention. Unless necessary, the information contained in Canada's previous reports is not repeated here and only significant changes are mentioned. For a complete picture of measures to implement the Convention, the previous reports should be consulted as well as reports submitted under other treaties, in particular the report submitted to the Human Rights Committee.

Consultations with Non-Governmental Organizations

3. The Government of Canada has written to many non-governmental organizations (NGOs), inviting them to give their views on the issues to be covered in the federal portion of this report. These organizations were invited to provide the names of other organizations that might be interested or to forward to them a copy of the government's letter.
4. Responses were received from the Canadian Council for Refugees and from the Canadian Centre for Victims of Torture. Most of the observations made by these NGOs deal with refugee issues and the immigration legislation that was drafted to replace the *Immigration Act* — the *Immigration and Refugee Protection Act* (Bill C-31). These consultations were made prior to the dissolution of Parliament in October 2000 and the Bill was not passed. The House of Commons adopted a new Bill (Bill C-11, *Immigration and Refugee Protection Act*) in June 2001, which entered into force in June 2002. The provisions of

Bill C-11 are in many aspects similar to the provisions of Bill C-31. Changes will be described in Canada's Fifth Report.

5. The Canadian Council for Refugees noted that, unlike the *Immigration Act*, Bill C-31 contains an explicit reference to the Convention against Torture. Despite a step towards recognizing the obligations under the Convention, the Canadian Council for Refugees indicates that the Bill does not fully respect article 3 of the Convention because the prohibition against removing a person to torture does not apply to people who are inadmissible on grounds of serious criminality or security. The Council deplores the fact that there have been no prosecutions of torturers in Canada and that there is no indication that efforts are under way to investigate allegations of torture committed by persons in Canada. It also raises concerns about the implementation of article 10 of the Convention for immigration officers and guards involved in detention. The Council continues to urge the development and adoption of guidelines for survivors of torture before the Immigration and Refugee Board (IRB). The Canadian Council expressed concerns regarding the fact that the new *Extradition Act* provides that a refugee claim submitted by a person whose extradition is requested will be determined by the Minister of Justice in consultation with the Minister of Citizenship and Immigration, and not by the IRB following a quasi-judicial procedure.
6. The Canadian Centre for Victims of Torture (CCVT) indicates that, in applying article 1, Canada has gone beyond the Convention definition of torture by including gender-related persecution as a type of torture. Canada's refugee determination system has been cited as an example for the international community. This system, used by the Convention Refugee Determination Division of the IRB to examine refugee claims, including those of alleged torture, is non-adversarial. The CCVT, however, has raised concerns regarding instances where hearings have, in its view, become adversarial due to the intervention of panel members, refugee hearings officers and representatives of the Minister of Citizenship and Immigration who may, with the concurrence of the Chair of the IRB, attend certain refugee hearings. The CCVT says that Canada has partially complied with article 2 of the Convention. Section 269.1 of the *Criminal Code* states that torture is illegal, but there remains an urgent need for Canada to incorporate the Convention into the *Immigration Act*. The CCVT has serious concerns regarding Canada's compliance with article 3 of the Convention, since a person recognized as a Convention refugee, but who poses a danger to public security or national security, could be deported to a country where he/she will likely be subjected to torture or death. The CCVT underlines that torture in Canada is not used as a part of systematic, political strategy of repression. As for article 6 of the Convention, the CCVT deplores the fact that there have been only a few cases of initiating prosecution for international fugitive torturers in Canada. It indicates that Canada has changed its focus from criminal prosecutions to the revocation of citizenship and deportation. The CCVT supports prosecution and is against

deportation. As for article 10 of the Convention, the CCVT has provided training for IRB officers and for immigration officers who make decisions with respect to Post Determination Refugee Class in Canada (PDRCC). Regarding article 11 of the Convention, the CCVT expresses concerns in regards to detention of refugee claimants. Some people have been detained and kept in detention for a long period of time. Another cause of concern is related to disregarding the dignity and humiliation faced by detained refugee claimants. Concerning article 12, the CCVT reports that Canada has demonstrated its willingness and ability to conduct investigations into allegations of torture. Under article 14, the CCVT indicates that there is a need for public education for people who have been tortured in other countries and are now living in Canada. As for article 15, the CCVT mentions the need for Canada to make sure that confessions and convictions for crimes not committed are never used against genuine refugees and immigrants. Finally, the CCVT underlines the need to define cruel, inhuman or degrading treatment or punishment and to develop mechanisms for the accountability and prosecution of officers who commit such offences.

7. The comments received from these organizations were taken into consideration in the preparation of the federal section of this report. All the contributions received will be forwarded to the United Nations under separate cover. Copies of all the contributions received were forwarded to the federal departments and agencies with the main responsibilities for the implementation of the Convention.

PART I

Overview

The Constitutional Structure of Canada

8. Canada is a federal state made up of 10 provinces and three territories. The third territory, Nunavut, was officially created on April 1, 1999.
9. Pursuant to the *Constitution Act, 1867*, and amendments thereto, legislative powers are divided according to subject matter between the federal government and the 10 provincial governments. For example, Canada's Constitution gives each province jurisdiction within its territory over the administration of justice, property and civil rights, and hospitals. Examples of matters within federal jurisdiction are criminal laws and procedures, naturalization and aliens, and residual power for the peace, order and good government of Canada.
10. The legislative, executive and judicial branches of government share responsibility for the protection of human rights in Canada. Relevant legislation is enacted by Parliament and the provincial and territorial legislatures, according to the division of powers described in the Canadian Constitution. Due to this division of powers, federal, provincial and territorial governments are all involved in the implementation of the provisions of the Convention against Torture. Prior to ratification, the federal and provincial governments engaged in extensive consultations which resulted in provincial governments undertaking to ensure compliance with those provisions of the Convention falling within their exclusive authority. The legislature is presumed to respect the values and principles enshrined in international law, both customary and conventional. International human rights law plays an important role as an aid in interpreting domestic law. It is also a critical influence on the interpretation of the scope of the rights included in the *Canadian Charter of Rights and Freedoms*.
11. With respect to prosecutions in Canada, constitutional responsibility is shared between the federal and provincial governments.
12. There is an overlap with respect to criminal law in that the federal government is responsible for enacting criminal law and procedure which applies throughout Canada as set forth in the *Criminal Code*. The enforcement of the *Criminal Code*, the prosecution of offences prescribed in that Code and the administration of justice within the province are generally matters under provincial responsibility. However, prosecutions under specific federal statutes, such as the *Crimes Against Humanity and War Crimes Act*, fall generally under federal jurisdiction.
13. The Government of Canada has submitted a *Core Document Forming Parts of the Reports of State Parties*. The Core Document examines, in detail, Canada's constitutional structure, political framework and general framework for the protection of human rights.

The latter includes a discussion of constitutional and legislative protections for human rights, remedies available for redress of human rights violations, and the relationship between international human rights instruments and domestic law. This Fourth Report under the Convention should be read in conjunction with the Core Document.

PART II

**Measures Adopted by
the Government of Canada**

Article 2: Legislative, Administrative, Judicial or Other Measures

14. Canada's previous reports outlined a series of constitutional, legislative, regulatory and administrative measures directed at preventing torture and punishing those who commit an act of torture. These included:
- The *Canadian Charter of Rights and Freedoms* and, in particular, the right not to be subjected to any cruel and unusual treatment or punishment (s. 12), the right to life, liberty and security of the person (s. 7), and the right not to be arbitrarily detained or imprisoned (s. 9). Section 32 of the Charter guarantees the rights of private persons against action by the federal and provincial legislatures and governments. This section has been interpreted by the courts to apply to the full range of government activities, including administrative practices and the acts of the executive branch of government, as well as to edicts of Parliament or the legislatures.
 - Section 269.1 of the *Criminal Code* provides a definition of torture that is similar to the definition contained in article 1 of the Convention. This section of the Code provides that torture means: any act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person, for a purpose including obtaining from the person or from a third person information or a statement; punishing the person for an act that the person or a third person has committed or is suspected of having committed; and intimidating or coercing the person or a third person; or for any reason based on discrimination of any kind, but does not include any act or omission arising only from, inherent in or incidental to lawful sanctions.
 - Section 269.1(3) of the *Criminal Code* establishes that it is no defence to a charge under this section that the accused was ordered by a superior or a public authority to perform the act or omission that forms the subject matter of the charge, or that the act or omission is alleged to have been justified by exceptional circumstances, including a state of war, a threat of war, internal political instability or any other public emergency.
 - Other *Criminal Code* offences relating to the prohibition against torture and cruel, inhuman or degrading treatment or punishment, such as: assault; causing bodily harm with intent to wound a person or endanger their life; murder; administering a noxious substance; extortion; and intimidation.
 - Legislative, regulatory and administrative provisions governing the use of force by police and correctional agencies such as the Royal Canadian Mounted Police Code of Conduct offences, ss. 68 and 69 of the *Corrections and Conditional Release Act* (CCRA), and the *Penitentiary Service Regulations*.

15. Important developments occurred since the last report presented by Canada. The *Act respecting genocide, crimes against humanity and war crimes and to implement the Rome Statute of the International Criminal Court, and to make consequential amendments to other Acts (Crimes Against Humanity and War Crimes Act, S.C. 2000, c. C-24)* entered into force on October 23, 2000. It implemented the *Rome Statute of the International Criminal Court* (the "Rome Statute"), adopted in Rome on July 17, 1998, and replaced the war crimes provisions of the *Criminal Code*. The *Crimes Against Humanity and War Crimes Act* also made consequential changes to Canada's extradition and mutual legal assistance legislation to enable Canada to comply with its obligations to the International Criminal Court. The *Crimes Against Humanity and War Crimes Act* affirms that any immunities otherwise existing under Canadian law will not bar extradition to the International Criminal Court or to any international criminal tribunal established by resolution of the Security Council of the United Nations (UN). Canada has been a driving force behind the creation of the International Criminal Court. Canada ratified the Rome Statute on July 7, 2000. Section 4 of the Act deals with genocide, crimes against humanity and war crimes committed in Canada, and section 6 of the Act deals with genocide, crimes against humanity and war crimes committed outside Canada. Both provide a definition of crime against humanity which includes torture. Torture is defined in the Schedule of the Act, which reproduces article 7(2)(e) of the Rome Statute.
16. As a general rule, available justifications, excuses or defences under the laws of Canada or under international law, at the time of the offence or at the time of the proceedings, may be relied upon by persons accused of genocide, crimes against humanity, war crimes and breach of responsibility by a military commander or by a superior (s. 11 of the *Crimes Against Humanity and War Crimes Act*). However, there are exceptions. It would not be a defence that an offence of genocide, a crime against humanity, a war crime, or a breach of responsibility by a military commander or a superior was committed in obedience to the law in force at the time and in the place of its commission (s. 13 of the *Crimes Against Humanity and War Crimes Act*). Generally, the Act adopts the Rome Statute's approach to the defence of superior orders. The defence would not apply as a defence to genocide or crimes against humanity, because these offences are *per se* manifestly unlawful. The defence could only apply to war crimes if the orders are not manifestly unlawful. However, the defence of superior orders has been restricted further under the Act. The Act provides that the defence of superior orders cannot be based on a belief that the order was lawful where the accused's belief was based on information about a civilian population or an identifiable group of persons that encouraged, was likely to encourage or attempted to justify the commission of inhumane acts or omissions against the population or the group (s. 14 of the *Crimes Against Humanity and War Crimes Act*).

17. The Canadian Forces requires its members to obey the lawful commands of superiors. It is not an offence to refuse to obey an unlawful command. Under section 83 of the *National Defence Act* (NDA), it is an element of the offence of disobeying a lawful command that the command be proven to be lawful. Members of the Canadian Forces are subject to the *Criminal Code* and would be subject to prosecution for any act of torture or other violation of the provisions of the *Criminal Code* dealing with cruel or inhuman treatment. An order to inflict torture upon a detainee would be a crime under section 269.1 of the *Criminal Code* of Canada and is punishable under section 130 of the NDA. Therefore, an order to commit an act of torture which is refused cannot result in a successful prosecution for disobeying a lawful command.
18. In 1997, the Canadian Forces adopted its Code of Conduct which provides explicit instructions about respect for the Convention against Torture, the prohibition of torture and inhuman treatment. Rule 6 says that all detained persons must be treated humanely in accordance with the standard set by the Third Geneva Convention. Any form of abuse, including torture, is prohibited. The Code explains that any form of physical or psychological abuse is prohibited.
19. The Code of Conduct also requires that any breaches of the Code of Conduct or international humanitarian law be reported without delay, and that "any attempt to cover up a breach of the law or the Code of Conduct is an offence under the Code of Service Discipline." The Code recognizes that it may be difficult to report a breach, for example, if a junior ranked member believes a member of a higher rank has committed a breach. Consequently, a number of mechanisms for reporting are provided — either to superiors in the chain of command, military police, a legal officer or to the independent Director of Military Prosecutions, whose office was established in 1999.

Article 3: Expulsion or Extradition

Immigration: The Assessment of the Risk of Return before Removal from Canada

20. The formal refugee determination process which was set out in detail in Canada's Third Report has not changed during this reporting period. An independent and impartial tribunal is charged with assessing whether the claimant has established that he meets the definition of "refugee" as described in the *Convention Relating to the Status of Refugees*. In addition to the formal refugee determination process, the *Immigration Act* and the *Regulations* allow the Minister to facilitate the admission of a person, for example, because the person could face a risk of torture if removed to his/her country. To that effect, there are two avenues.

(a) Post Determination Refugee Claimants in Canada Class

21. The Post Determination Refugee Claimants in Canada Class (PDRCC) is available to persons who, although determined not to be Convention refugees, may face personal risk should they be returned to their country of origin. The *Regulations* provide for some exceptions to access to PDRCC. The PDRCC review assesses risk to life, inhumane treatment or extreme sanctions. A positive PDRCC assessment allows persons in Canada who are not accorded refugee status under the *Convention Relating to the Status of Refugees* to apply for landed immigrant status from within Canada. PDRCC decisions are made by Post-Claim Determination Officers who are specially trained to assess risk and who have access to information on the human rights situation around the world.
22. The PDRCC risk assessment process has been determined to be a viable and effective domestic remedy by both the Committee against Torture (*KKH v. Canada*; *VV v. Canada*¹) and the UN Human Rights Committee (*Adu, Badu and Nartey*²).

(b) Humanitarian and Compassionate Applications

23. In this administrative review, an immigration officer has the duty to consider any submission put forth by the applicant and has unfettered discretion to use his/her judgment in assigning relative weight to the facts of the case when deciding whether the application warrants approval or refusal. A positive determination would mean that the officer is satisfied that the person should be exempted from any regulation or that the person's admission should be facilitated owing to the existence of compassionate or humanitarian considerations.
24. Humanitarian and compassionate factors considered could include family ties, presence of a spouse in Canada, overall integration within Canadian society and personal risk should the individual be removed from Canada.

¹ *K. K. H. v. Canada*, Communication No. 35/1995, views adopted on 22 November 1995 (CAT/C/15/D/35/1995); *V. V. v. Canada*, Communications No. 47/1996, views adopted on 19 May 1998 (CAT/C/20/D/47/1996).

² *Kwame Williams Adu v. Canada*, Communication No. 654/1995, views adopted on 18 July 1997 (CCPR/C/60/D/654/1995); *Andres Badu v. Canada*, Communication No. 603/1994, views adopted on 18 July 1997 (CCPR/C/60/D/603/1994); *Joseph Nartey v. Canada*, Communication No. 604/1994, views adopted on 18 July 1997 (CCPR/C/60/D/604/1994).

Immigration and Refugee Protection Act (Bill C-31)

25. Following extensive public consultations, a new *Immigration and Refugee Protection Act* (Bill C-31) was tabled in Parliament on April 6, 2000. Although the Bill died on the Order Paper when the election of November 27, 2000 was called, with Bill C-31 the government demonstrated its commitment to maintaining Canada's humanitarian tradition by continuing to provide a fair hearing to people claiming persecution. At the same time, Bill C-31 proposed strengthened provisions to protect the integrity of the refugee determination system to ensure that protection would be offered only to people in genuine need. Bill C-31 has been replaced by Bill C-11. The new bill incorporates a number of recent proposals from Canadians, yet maintains the core principles and provisions of Bill C-31.
26. Bill C-31 proposed many changes to the refugee determination process to increase its effectiveness and integrity. One of the principal elements of the reformed process is consolidated decision making. The criteria for granting refugee protection included grounds outlined in the *Convention Relating to the Status of Refugees* and the Convention against Torture, and risk to life or risk of cruel and unusual treatment or punishment. This consolidates grounds for protection that are currently assessed through three separate procedures (refugee status determination, post-determination risk review and risk-related humanitarian review) into one procedure at the Immigration and Refugee Board (IRB). The international instruments that have been incorporated into the refugee protection definition to be considered by the IRB include the *Convention Relating to the Status of Refugees* and article 1 of the Convention against Torture. Bill C-31 also contained a provision that would allow the Minister, through regulations, to add additional international instruments to the refugee protection division to accommodate changes over time.
27. Bill C-31 proposed a Pre-Removal Risk Assessment (PRRA) to be conducted by Citizenship and Immigration Canada (CIC) to examine potential personal risk of return, including risk of torture. Under the proposed legislation, all persons (with certain exceptions) against whom an enforceable removal order has been issued may make an application for protection to the Minister of Citizenship and Immigration. This includes persons whose claims for refugee protection has been refused but who have not yet left Canada.

Jurisprudence

28. On January 11, 2002, the Supreme Court of Canada released its decisions in the cases of *Suresh v. M.C.I.* (SCC no. 27790) and *Ahani v. M.C.I.* (SCC no. 27792)³.
29. Mr. Suresh, a citizen of Sri Lanka, was found to be a Convention Refugee in 1991. He is alleged to be a prominent fundraiser for the Tamil Tiger group known as the Liberation Tigers of Tamil Eelam. The Solicitor General of Canada and the Minister of Citizenship and Immigration issued a security certificate under section 40.1 of the *Immigration Act* alleging that Mr. Suresh was engaging in terrorism and was a member of an organization which engaged in terrorism. This certificate was upheld by the Federal Court. Mr. Suresh was ordered deported in 1997 on the basis of his membership in a terrorist organization. In 1998, the Minister of Citizenship and Immigration reviewed his case and signed an opinion that he was a danger to the security of Canada pursuant to section 53(1)(b) of the Act. The Minister concluded that the threat Mr. Suresh posed to Canada's security outweighed his risk of torture upon return and further concluded that his risk of torture was not a substantial one.
30. Section 53(1)(b) of the Act, which reflects article 33 of the *Convention Relating to the Status of Refugees*, permits a Convention Refugee to be removed to a country where that person's life and freedom would be threatened, if they constitute a danger to the public or to the security of Canada.
31. Before the Canadian courts, Mr. Suresh argued that his removal to Sri Lanka would violate article 3 of the Convention against Torture and the *Canadian Charter of Rights and Freedoms*.
32. The Supreme Court of Canada examined the question of whether the government may, consistent with the principles of fundamental justice (s. 7 of the Charter guarantees the right not to be deprived of the life, liberty and security of the person except in accordance with the principles of fundamental justice), expel a suspected terrorist to face torture elsewhere.
33. The Court concluded that the appropriate approach is essentially one of balancing: "The outcome will depend not only on considerations inherent in the general context but also on considerations related to the circumstances and condition of the particular person whom the government seeks to expel. On the one hand stands the state's genuine interest in combating terrorism, preventing Canada from becoming a safe haven for terrorists, and

³ The decisions can be found at: <http://www.lexum.umontreal.ca/csc-scc/rec/html/suresh.en.html> and at <http://www.lexum.umontreal.ca/csc-scc/fr/rec/html/ahani.fr.html>.

protecting public security. On the other hand stands Canada's constitutional commitment to liberty and fair process. This said, Canadian jurisprudence suggests that this balance will usually come down against expelling a person to face torture elsewhere."

34. The Court has not excluded the possibility that, in exceptional circumstances, deportation to face torture might be justified, either as a consequence of the balancing process mandated by section 7 of the Charter or under section 1. (A violation of s. 7 will be saved by s. 1 "only in cases arising out of exceptional conditions, such as natural disasters, the outbreak of war, epidemics and the like.") Generally, however, to deport a refugee, where there are grounds to believe that this would subject the refugee to a substantial risk of torture, would unconstitutionally violate the Charter.
35. The Court expressed the following comments on the international norms, which as explained above inform section 7 of the Charter:

"In our view, the prohibition in the ICCPR [International Covenant on Civil and Political Rights] and the CAT on returning a refugee to face a risk of torture reflects the prevailing international norm. Article 33 of the *Refugee Convention* protects, in a limited way, refugees from threats to life and freedom from all sources. By contrast, the CAT protects everyone, without derogation, from state-sponsored torture [...]

"Recognition of the dominant status of the CAT in international law is consistent with the position taken by the UN Committee against Torture, which has applied Article 3(1) even to individuals who have terrorist associations. (...) More particularly, the Committee against Torture has advised that Canada should '[c]omply fully with article 3(1) ... whether or not the individual is a serious criminal or security risk': see Committee against Torture, *Conclusions and Recommendations of the Committee against Torture: Canada*, CAT/C/XXV/Concl.4, at par. 6(a)."

36. The Court concluded that Suresh made a *prima facie* case showing that he might be tortured on return if expelled to Sri Lanka. Accordingly, he should have been provided with the procedural safeguards necessary to protect his section 7 right not to be expelled to torture. The minimal safeguards required are that the Minister must provide the refugee with all the relevant information and advice he/she intends to rely on, as well as an opportunity to address that evidence in writing, and, after considering all the relevant information, issue responsive written reasons.
37. At the same time as *Suresh*, the Supreme Court of Canada released its decision in *Ahani* and adopted the same reasons. In this case, the Solicitor General of Canada and the Minister of Citizenship and Immigration have also issued a security certificate under section 40.1 of the *Immigration Act* alleging that Mr. Ahani was a member of an

organization which engaged in terrorism. This certificate was upheld by the Federal Court. Mr. Ahani is a member of the Iranian Ministry of Security and Intelligence which commits terrorist activities world-wide. He argued that his removal would violate article 3 of the Convention against Torture and the Canadian Charter.

38. The Court concluded that the Minister applied the proper principles and took into account the relevant factors in her decision that Mr. Ahani faced only a minimal risk of harm upon deportation and that he was a danger to the public. The Court found no basis upon which to interfere with her decision. The Court was satisfied that Ahani was fully informed of the Minister's case against him and was given a full opportunity to respond. It concluded that the process accorded to Ahani was consistent with the principles of fundamental justice.

Interim Measures Request from the Committee against Torture in Cases of Communication Based on an Alleged Violation of Article 3 of the Convention (Mr. TPS — Communication No. 99/1997)

39. In September 1997, TPS filed a communication with the Committee in which he alleged that his removal to India would violate article 3 of the Convention against Torture.
40. On December 18, 1997, the Committee requested that Canada not remove TPS to India while his communication was under consideration by the Committee. Canada considered the request and determined that it would not comply, given the exceptional circumstances of the case, and removed TPS to India on December 23, 1997.
41. The decision to remove was not taken lightly. The Minister of Citizenship and Immigration carefully considered the possible risk to public safety and security posed by the presence of TPS in Canada against any possible risk he faced upon return. Indeed, the Minister concluded that there was no substantial risk of torture faced by the individual in his country of origin. Further, a judge of the Federal Court, Trial Division, determined that the risk to TPS was not sufficient to justify a stay of his removal. Although Canadian officials offered to monitor the situation of the individual concerned, and advised the government of the state of return of this intention, the individual refused this offer.
42. In its final views, adopted on May 16, 2000, the majority of the Committee against Torture found that Canada was not in violation of its article 3 obligations in removing TPS from Canada.
43. Canada considers its obligations under international instruments seriously. Canada further considers that an interim measure request is not an order. Nevertheless, interim measures requests received from the Committee are given serious consideration irrespective of their

legal status. Canada recognizes the importance of interim measures requests but would favour the adoption of rules of procedure which would ensure that these requests are made only when the individual faces some credible risk of torture and for a limited period of time. This is particularly important in cases where the individual may be a risk to public safety. In addition, Canada is concerned that the Committee's procedures do not allow States parties to adequately make representations before interim measures requests are made, and that delays in the examination of communications can jeopardize important state interests in protecting public safety.

44. During its appearance before the Committee in November 2000, Canada welcomed the Committee's suggestion that, when faced with circumstances where compliance with an interim measures request is difficult, Canada should present the Committee with arguments as to why a request should not be made, or should ask that consideration of the case be expedited. Canada considers that these suggestions address in large part the concerns which led to the deportation of TPS. These suggestions are also consistent with recommendations made by Canada in the context of the review of treaty bodies, including a recommendation that the Committee against Torture and the Human Rights Committee consider augmenting their rules of procedure to include clear criteria to govern the issuing and revocation of requests for interim protection.

Extradition

45. On June 17, 1999, Canada's new *Extradition Act* came into force. The new Act establishes clear procedures for the extradition process and permits more flexible evidentiary requirements. The Act permits the surrender of persons sought to states and to entities like the International Criminal Tribunals for the former Yugoslavia and Rwanda.
46. The extradition process under the new Act continues to have both a judicial and an executive phase. At the judicial phase, a judge will determine if the conduct constitutes an offence in Canada and, where the person is wanted for prosecution, if there is sufficient evidence such that, had the conduct occurred in Canada, the person would be committed to stand trial. At the executive phase, the Minister of Justice will decide whether or not to surrender, taking into account all of the circumstances and any applicable ground of refusal.
47. Under the Act, the Minister of Justice shall refuse surrender of a person sought, if the Minister is satisfied that:
- the surrender would be unjust or oppressive having regard to all the relevant circumstances; or

- the request for extradition is made for the purpose of prosecuting or punishing the person by reason of their race, religion, nationality, ethnic origin, language, colour, political opinion, sex, sexual orientation, age, mental or physical disability or status, or that the person's position may be prejudiced for any of those reasons.

48. The *Convention Relating to the Status of Refugees* excludes from its protection individuals who have committed a serious non-political crime outside the host country. Proceedings before the Convention Refugee Determination Division of the Immigration and Refugee Board for a claimant who is subject to a request for extradition for an offence that is punishable by 10 years or more in Canada (if committed here) under federal law will be stayed until a ruling on the request for extradition.
49. The Minister of Justice can only order extradition if the judge, following a hearing, is satisfied with the evidence submitted. The *Extradition Act* states that the Minister of Justice shall consult the Minister of Citizenship and Immigration before making a decision on extradition when the person whose extradition is requested has claimed refugee status. The person can make submissions to the Minister of Justice against the extradition and present facts, arguments and documents to this end. The reasons for refusal of extradition set out in the *Extradition Act* and outlined above or in the applicable treaty will apply. Furthermore, the Minister of Justice may attach assurances and conditions to the extradition.
50. As noted in Canada's Second Report, the Minister's exercise of discretion to surrender is subject to the *Canadian Charter of Rights and Freedoms*, and in particular section 7 of the Charter — the right not to be deprived of life, liberty and security of the person except in accordance with the principles of fundamental justice. A person sought has the ability to appeal a committal for extradition to the provincial Courts of Appeal and to the Supreme Court of Canada, if leave is granted and judicial review of a ministerial decision to surrender is similarly available.

Jurisprudence

51. The Supreme Court of Canada recently released a decision with respect to the constitutionality of the Minister of Justice's decision to surrender to the United States of America two Canadian citizens (Burns and Rafay) who were wanted in the State of Washington on charges of aggravated murder in the first degree, and who, if convicted of those crimes, could face the death penalty⁴.

⁴ *United States v. Burns*, [2001] 1 S.C.R. 293 (http://www.lexum.umontreal.ca/csc-scc/en/pub/2001/vol1/html/2001scr1_0283.html).

52. The Supreme Court of Canada decided that to order the extradition of Burns and Rafay without obtaining assurances that the death penalty will not be imposed would violate the principles of fundamental justice. In the absence of exceptional circumstances, which the Court did not define, assurances in death penalty cases are always constitutionally required.
53. The Court did not foreclose the possibility that there may be situations where the Minister's objectives are so pressing, and where there is no other way to achieve those objectives other than through extradition without assurances, that a violation might be justified. In those cases, the Minister must show that: the refusal to ask for assurances serves a pressing and substantial purpose; the refusal is likely to achieve that purpose and does not go further than necessary; and the effect of unconditional extradition does not outweigh the importance of the objective.

Article 4: Criminalization of Torture

Crimes Against Humanity and War Crimes Act

54. The *Crimes Against Humanity and War Crimes Act* repealed former section 7(3.71) to (3.77) of the *Criminal Code*. Section 4 of the Act provides that genocide, crimes against humanity and war crimes committed in Canada are indictable offences. The definition of a crime against humanity includes torture and other acts that may constitute cruel, inhuman or degrading treatment or punishment. It reads as follows:
- “Crime against humanity means murder, extermination, enslavement, deportation, imprisonment, torture, sexual violence, persecution or any other inhumane act or omission that is committed against any civilian population or any identifiable group and that, at the time and in the place of its commission, constitutes a crime against humanity according to customary international law or conventional international law or by virtue of its being criminal according to the general principles of law recognized by the community of nations, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission.”
55. Section 4(1.1) of the *Crimes Against Humanity and War Crimes Act* provides that every person who conspires or attempts to commit is an accessory after the fact in relation to, or counsels in relation to, an act of genocide, a crime against humanity or a war crime is guilty of an indictable offence. The *Criminal Code* also contains specific dispositions which deal with parties to offences, attempts, conspiracies and accessories (ss. 20-24, 463, 464, 660).

56. Section 4(2) of the *Crimes Against Humanity and War Crimes Act* also establishes the penalty applicable to the person found guilty of committing genocide, a crime against humanity or a war crime, or to the person who would conspire or attempt to commit, be an accessory after the fact in relation to, or counsel in relation to these offences. Such a person shall be sentenced to imprisonment for life, if an intentional killing forms the basis of the offence, and is liable to imprisonment for life in any other case.
57. Section 6 of the *Crimes Against Humanity and War Crimes Act* provides that genocide, crimes against humanity and war crimes committed *outside* Canada are indictable offences. The definition of a crime against humanity includes torture and other acts that may constitute cruel, inhuman or degrading treatment or punishment. The definitions of these crimes are similar to the definitions contained in section 4 of the Act. Section 6(1.1), similar to section 4(1.1), provides that every person who conspires or attempts to commit, is an accessory after the fact in relation to, or counsels in relation to, an act of genocide, a crime against humanity or a war crime is guilty of an indictable offence. Section 6(2) sets out the applicable penalties, which are identical to those found in section 4(2) of the Act.

National Defence Act

58. The *National Defence Act* provides, in section 77(f), that it is an offence for any member of the Canadian Forces to commit an offence against the property or person of any inhabitant or resident of a country in which the Canadian Forces member is serving. If such an offence is committed while the Canadian Forces member is on active service, he/she is liable to either imprisonment for life or to a lesser punishment. In any other case, the Canadian Forces member is liable to dismissal with disgrace or to a lesser punishment (including any punishment lower on the scale of punishments, such as imprisonment for less than two years). Section 129 of the *National Defence Act* establishes that it is an offence to contravene any provisions of the Act, any regulations, orders or instructions for the general information and guidance of the Canadian Forces or any part thereof, or any general, garrison, unit, station, standing, local or other orders. Upon conviction of that offence, the member is liable to dismissal with disgrace or to a lesser punishment. By section 130 of the *National Defence Act*, members of the Canadian Forces are also subject to the provisions of the *Criminal Code* and all other Acts of Parliament in Canada and abroad, and are liable to all penalties provided for in those statutes. This includes the minimum penalties prescribed in section 235 of the *Criminal Code* for murder and the provisions of section 269.1 dealing with torture.

Article 5: Establishment of Jurisdiction

59. Section 7(3.7) of the *Criminal Code* establishes the jurisdiction of Canada over the offence of torture in all situations mentioned in article 5 of the Convention. It provides that, notwithstanding anything in the *Criminal Code* or any other Act, everyone who, outside of Canada, commits an act or omission that, if committed in Canada, would constitute an offence against, a conspiracy or an attempt to commit an offence against, being an accessory after the fact in relation to an offence against, or any counselling in relation to an offence against, section 269.1 of the *Criminal Code* shall be deemed to commit that act or omission in Canada if:

- the act or omission is committed on a ship that is registered or licensed, or for which an identification number has been issued, pursuant to any Act of Parliament
- the act or omission is committed on an aircraft registered in Canada under Regulations made under the *Aeronautics Act*, or leased without crew and operated by a person who is qualified under Regulations made under the *Aeronautics Act* to be registered as owner of an aircraft in Canada under those Regulations
- the person who commits the act or omission is a Canadian citizen
- the complainant is a Canadian citizen, or
- the person who commits the act or omission is, after the commission thereof, present in Canada

60. Section 8 of the *Crimes Against Humanity and War Crimes Act* sets out the bases of jurisdiction for Canada to be able to prosecute the offences of genocide, crimes against humanity, war crimes and breaches of responsibility that have been committed outside of Canada. Section 8 also states that a person who is alleged to have committed genocide, crimes against humanity, war crimes or breach of responsibility outside of Canada may be prosecuted for that offence if:

“(a) at the time the offence is alleged to have been committed

- the person was a Canadian citizen or was employed by Canada in a civilian or military capacity; or
- the person was a citizen of a state that was engaged in an armed conflict against Canada, or was employed in a civilian or military capacity by such a state; or
- the victim of the alleged offence was a Canadian citizen; or
- the victim of the alleged offence was a citizen of a state that was allied with Canada in an armed conflict; or
- after the offence is alleged to have been committed, the person is present in Canada.”

61. This provision allows for the exercise of universal jurisdiction where the accused is present in Canada after the offence is alleged to have been committed.

Article 6: Custody and Other Legal Measures

62. Canada's First Report indicated that a peace officer who has reasonable grounds to believe that a person has committed an indictable offence, such as torture, may arrest that person without warrant for the purpose of criminal proceedings.
63. All extradition treaties entered into by Canada and the *Extradition Act* provide that a provisional warrant of arrest may be obtained to secure the physical custody of a fugitive. However, a person arrested for extradition will be discharged if the proper supporting documentation is not received within the period of time set out in the *Extradition Act* or under the relevant treaty, or if the Minister does not issue an authority to proceed under the *Extradition Act*.

Article 7: Prosecution of Offences

64. Over the past several years, the Government of Canada has taken significant measures to ensure that our country does not provide safe haven for war criminals. The message is clear: those individuals who have committed a war crime, a crime against humanity or any other reprehensible act during times of conflict, regardless of when or where these crimes occurred, are not welcome in Canada.
65. As a responsible member of the global community, Canada's War Crimes Program is a priority for the Canadian government. It is the intention of the Government of Canada that the War Crimes Program has the ability to take action against individuals who are suspected of committing war crimes or crimes against humanity, by using the most appropriate of six complementary tools: extradition; transfer to the international tribunals; denial of refugee protection; deportation and denaturalization proceedings; denial of access to Canada; and domestic criminal prosecutions.
66. An Interdepartmental Operations Group created in 1998 is the vehicle through which the Government of Canada coordinates all of the war crimes operations it undertakes. One of the purposes of the Group is to ensure that Canada complies with its international obligations. This includes the investigation, prosecution and extradition of war criminals, as well as cooperation with the two international tribunals set up for this purpose, namely: the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR).

67. The Interdepartmental Operations Group ensures that the Government of Canada has properly addressed all allegations of war crimes and crimes against humanity against Canadian citizens or persons present in Canada. In order to meet this objective, the Royal Canadian Mounted Police and the Department of Justice investigate allegations involving reprehensible acts that could lead to a possible criminal prosecution or revocation of citizenship, while Citizenship and Immigration Canada pursues the application of remedies under the *Immigration Act*.
68. Starting in December of 1999, officials began to review all allegations against individuals involved in genocide, war crimes and crimes against humanity. In excess of 800 files were reviewed, most of which were active Citizenship and Immigration files. As a result of this review, files were opened by the Department of Justice War Crimes Section for all allegations of genocide and war crimes from international armed conflicts, most of which stemmed from the Yugoslav and Rwandan conflicts, and for the most serious allegations of crimes against humanity. Approximately 10 percent of the files reviewed fell within these categories, and they are being investigated. It is rarely the case that sufficient evidence to successfully pursue a charge will be found within Canada. Investigators almost always must conduct interviews and examine documents abroad. Where there is evidence of torture sufficient to create a reasonable likelihood of conviction by Canadian courts, appropriate charges will be laid.

Article 8: Extradition Agreements

69. Under the new *Extradition Act*, extradition agreements, including multilateral agreements like the Convention against Torture, that are in force and to which Canada is a party and that contain a provision respecting the extradition of persons, are "extradition agreements" for the purposes of the Act. The Convention may be used as the basis for extradition to another State party.

Article 9: Mutual Judicial Assistance

70. Canada's Second Report noted that the *Mutual Legal Assistance in Criminal Matters Act* provides the legal framework for the implementation of treaties between Canada and other states for the purposes of fostering cooperation in the investigation and prosecution of crimes. The Act provides for five basic forms of assistance: (1) the gathering of evidence, including taking statements and testimony; (2) the execution of search warrants; (3) the temporary transfer of prisoners for the purpose of testifying or providing other assistance; (4) the lending of exhibits; and (5) assistance with respect to proceeds of crime.

71. Between April 1996 and April 2000, Canada entered into treaties regarding mutual legal assistance with various countries, including Austria, Greece, Hungary, Israel, Norway, Peru, Poland, Portugal, Romania and Ukraine. In the event of an alleged case of torture, and in absence of a mutual legal assistance treaty, mutual legal assistance would also be available on the basis of ad hoc administrative arrangements or on the basis of non-treaty assistance.

Article 10: Education and Training

Royal Canadian Mounted Police

72. The Basic Training Program for new entrants into the Royal Canadian Mounted Police (RCMP) is given to all new entrants who hold peace officer status. These peace officers are the RCMP's service providers who have the legal authority to search, seize and detain/arrest, based on conditions being satisfied under the *Criminal Code*.
73. Since Canada's Third Report, the RCMP has further developed and implemented Community Policing. Part of this philosophy is to apply to any situation a problem-solving model called CAPRA, which is the acronym for the five words that are at the root of the RCMP's preferred problem-solving approach: Clients, Analysis, Partnerships, Response, Assessment.
74. The Cadet Training Program (CTP) is based on the community policing philosophy and CAPRA using problem-based learning as the methodology. Instead of teaching content, the CTP teaches process so that the cadets are responsible for their own learning while a trained facilitator guides them.
75. The CAPRA process and scenario-based learning requires that cadets learn about different cultures, as it is a component of the "acquiring and analyzing" portion of the problem-solving model. The goal of the RCMP's training approach (including cultural awareness) is to develop continuous learners who are able to provide a police service that is inclusive of every community, and who are respectful and compassionate in serving the unique needs of each community. The whole nature of "process" is one of discovery and interest that supports and encourages open mindedness, and appreciation and respect for diverse cultures. It is felt that this aspect of the RCMP's training mitigates against behaviour that could be termed torture.
76. The RCMP provides training on sections of the *Criminal Code* which deal with the protection of persons acting under authority, and what the Code terms "excessive force" and "use of force." Torture in section 269.1 of the *Criminal Code* is reviewed in scenario-based situations and cadets are required to conduct further research.

77. The RCMP also teaches and continually reinforces the application of the *Canadian Charter of Rights and Freedoms* as it applies to interviews, detention, arrests and imprisonment. The RCMP ensures that changes to policy based on Canadian judicial decisions (case law) or any amendments to legal statutes are communicated to all personnel through policy manuals provided in electronic format.
78. Charter rights are reviewed during ongoing training courses such as the Basic Investigator's Course, Advanced Interview and Interrogation Course, and all RCMP courses where the subject matter includes the investigation of persons for criminal activity. The RCMP has developed a clear operational policy concerning interviews/interrogations that makes reference to the Convention against Torture and specifically states that: "A member will not employ any tactic which involves the administration of or consent to cruel, inhuman or degrading treatment or punishment of any person."
79. The RCMP's continuous learning website can be found at: www.rcmp-learning.org.

Correctional Service

80. All staff members of the Correctional Service of Canada are required to be familiar with the constitutional, legislative, regulatory and policy framework that governs the conditions, care, treatment and custody of federal offenders. Staff receive induction and refresher training in the interpretation and application of those sections of the *Criminal Code* which give specific authority for the use of force in the correctional context. As part of their mandatory 12-week induction training, new correctional officer recruits are introduced to the Correctional Service of Canada's *Use of Force Management Model*, which allows for verbal intervention, conflict resolution and negotiation to be used, where appropriate. It is the experience of Correctional Service of Canada that effective communication, negotiation and assessment skills can, in most cases, negate the need for the use of force. As required, refresher training includes re-qualification and/or certification in the use of firearms, chemical agents, restraint equipment, batons and the physical handling of inmates. A National Use of Force Trainer's Conference was held in September 1999.
81. During induction training, recruits apply case law criteria in assessing whether certain administrative actions taken by correctional authorities constitute cruel and unusual punishment within the meaning of section 12 of the *Canadian Charter of Rights and Freedoms*.

Canadian Forces

82. The Somalia mission taught the Canadian Forces (CF) many valuable lessons, including the need to ensure that all CF personnel deployed on a mission more clearly understand and apply international humanitarian law and the rules of engagement. In 1997, the CF adopted its Code of Conduct, which provides explicit instructions about respect for the Convention against Torture (Rule 6), the prohibition against torture and inhumane treatment. Members of the CF are subject to the *Criminal Code*, and would be subject to prosecution for any act of torture or other violation of the provisions of the *Criminal Code* dealing with cruel or inhuman treatment. The *Code of Conduct for Canadian Forces Personnel* has been rewritten to make it more user friendly, and an interactive CD-ROM has been developed to facilitate the teaching of its contents.
83. The CF have developed and published a manual entitled *The Law of Armed Conflict at the Operational and Tactical Level* (LOAC) which gives detailed direction on the treatment of prisoners of war, the sick and wounded, and civilians. Human rights standards have been incorporated into the CF's law of armed conflict training curriculum. LOAC training in the CF is made up of lectures and courses delivered at all levels from recruit school and basic officer training, up to the CF Command. LOAC scenarios have also been incorporated into army computer-simulated exercises which are conducted from the sub-unit up to the formation (brigade) level. Although LOAC applies as a matter of law only during armed conflicts, the CF has adopted the policy that, as a minimum, all Canadian military personnel shall apply the spirit and the principles of LOAC in all peace support operations other than armed conflicts.
84. The CF are considering ways to expand the availability of LOAC instruction. Possibilities include the development of intermediate or advanced LOAC courses, and the delivery of basic LOAC instruction via computer-based training.
85. To respond to the recommendations made in the *Report of the Commission of Inquiry into the Deployment of Canadian Forces to Somalia* and five other reports on issues such as military justice, the Minister of National Defence established a "Monitoring Committee on Change" in 1997. The Monitoring Committee's terms of reference include receiving reports on the implementation of the recommendations contained in the March 25, 1997 Report to the Prime Minister on Leadership and Management in the Canadian Forces; the Report of the Special Advisory Group on Military Justice and Military Police Investigation Services; the Report of the Commission of Inquiry into the Deployment of Canadian Forces to Somalia; and other change initiatives across the CF and the Department of National Defence. The recommendations deal, *inter alia*, with accountability issues (e.g., military discipline and military leadership in the context of accountability) and operational issues (e.g., the chain of command, the rules of

engagement, operational readiness, mission planning, and overall military planning, practical and ethical elements of military training, both general and in preparation for specific missions).

86. In February 2000, the Monitoring Committee reported on the status of implementation of the recommendations in the various reports. Included is a chapter on accountability which sets out the status of implementation of the various recommendations of the Somalia Report, with the recommendation that "formal criteria be adopted for accountability of leaders in the Canadian Forces," and the recommendation that the values, principles and processes of accountability be incorporated into education and training. The Report can be found at:
http://www.forces.ca/menu/press/Reports/monitor_com_final/eng/cover_e.htm.

Immigration Enforcement Officers

87. Citizenship and Immigration Canada (CIC) introduced a policy entitled "The Respectful Workplace," as well as a values and ethics training component in its training program for enforcement personnel. All enforcement officers are also trained in the use of force policy, which includes legal requirements, the exercise of judgment, safety, theories related to the use of force, and practical proficiency to an approved standard. In the near future, CIC will also be introducing personal suitability testing for enforcement officers. All of these policy and training initiatives are part of the Department's ongoing commitment to ensure the safety and security of the Canadian public, CIC clients and employees by reinforcing the professionalism of enforcement personnel.

Funding for Victims of Torture

88. Governments in Canada — at both the federal and provincial levels — provide funding for the treatment of torture victims in a number of ways. There is direct financial support from federal, provincial and municipal governments to Canadian Centres for Victims of Torture in Calgary, Edmonton, Montreal, Ottawa, Toronto and Vancouver. In addition, the federal government provides \$60,000 to the UN Fund for Victims of Torture, which helps support a number of these centres.
89. A network of organizations in Canada provides related training to front-line workers, social services workers and medical personnel. The Réseau d'intervention auprès des personnes ayant subi la violence organisée and the Network of Counsellors & Network Committee to Assist Survivors of War and Torture are two such agencies. Some of the member organizations receive funding from CIC, as well as other government and voluntary sources.

90. One such agency, the Canadian Centre for Victims of Torture (CCVT), provides direct and indirect services to immigrants and refugees who have experienced torture. These services include language training, job search assistance, referrals, translation and counselling. In both 1999-2000 and 2000-01, the CCVT received in excess of \$400,000 from Citizenship and Immigration Canada to provide those services. The Government of Ontario also provides approximately \$30,000 annually to the Toronto Centre.

Article 11: Treatment of Persons Arrested, Detained or Imprisoned

Correctional Service

91. The legislation governing the treatment of offenders sentenced to a term of imprisonment of two years or more by the courts is the *Corrections and Conditional Release Act* (CCRA). Promulgated in 1992, the CCRA replaced the now repealed *Penitentiary Act* and *Parole Act*, and is currently under revision by the Parliamentary Sub-Committee following extensive public and legislative review. Section 3 of the CCRA stipulates that the purpose of the federal correctional system is to:

“... contribute to the maintenance of a just, peaceful and safe society by:

- carrying out sentences imposed by courts through the safe and humane custody and supervision of offenders; and
- assisting the rehabilitation of offenders and their reintegration into the community as law-abiding citizens through the provision of programs in penitentiaries and in the community.”

92. The Correctional Service of Canada is responsible for the safe, secure and humane control and custody of federally sentenced offenders. As of June 2000, there were 23,400 offenders under the supervision of Correctional Service. Approximately 58 percent of the total offender population is incarcerated and the remainder is supervised in the community. Female offenders represent approximately 2.75 percent of the total incarcerated population while Aboriginal offenders represent 17 percent.
93. Section 4 of the CCRA sets down the legislative principles upon which sentences of imprisonment are to be administered. Based on the rule of law, these principles affirm the duty to act fairly and reflect constitutionally entrenched Charter rights and freedoms. Section 4(e) of the CCRA affirms that “offenders retain the rights and privileges of all members of society, except those rights and privileges that are necessarily removed or restricted as a consequence of the sentence.” Finally, section 4(g) requires that correctional decisions be made in a fair and forthright manner, and provides offenders access to an effective grievance resolution process.

Use of Force

94. Correctional staff are accountable for using only as much force as is believed, in good faith and on reasonable grounds, to be necessary to carry out their legal duties. Section 4(d) of the CCRA requires that Correctional Service use the "least restrictive" measures in controlling offenders, consistent with the protection of the public, staff and offenders. Every reasonable step is taken to explore and assess alternatives to the use of, or escalation in the use of, force. The use of force is proportional to the risks and circumstances. Correctional officers may use "reasonable" and "necessary" force to: prevent or suppress the commission of an offence by an inmate; protect themselves against unprovoked assaults; suppress riots; and prevent escape from medium and maximum security penitentiaries.
95. All instances of the use of force must be reported to the institutional head for review. When the institutional head has reason to suspect that the amount of force used may have been excessive, he/she shall formally call for an investigation.
96. Correctional policy requires that "Use of Force" reports be completed, describing and justifying the type and amount of force used in specific contexts. All inmates are to be examined by health care professionals following any use of force situation. The health care officer signs the "Use of Force" form indicating that examination and treatment of inmates has been provided, as required.
97. The practice of videotaping use of force incidents was nationally implemented in February 1997, in response to a recommendation made by the *Commission of Inquiry into Certain Events at the Prison for Women* (Arbour Report, 1996). In May 2000, further policy directions were issued to clarify specific responsibilities and accountabilities within Correctional Service for ensuring that use of force incidents are thoroughly and objectively reviewed. Under the policy, any use of force situation involving cell extractions, Institutional Emergency Response Team deployments, major security incidents, strip searches and other incidents where force may be necessary or expected to be used must be videotaped. The purpose of videotaping is to determine whether the use of force was appropriate, and carried out in accordance with policy and applicable legislation. The use of force videotape is reviewed at the institutional, regional and national levels, and, when necessary, corrective measures are taken as a means of ensuring compliance with policies and procedures. A copy of the videotape is forwarded

to the Office of the Correctional Investigator (OCI)⁵ within 20 calendar days of the occurrence of the incident.

Commission of Inquiry into Certain Events at the Prison for Women

98. *Canada's Third Report* contains a detailed summary of Madame Justice Arbour's findings and recommendations of the *Commission of Inquiry into Certain Events at the Prison for Women* in Kingston (the Commission of Inquiry), submitted to the Solicitor General of Canada in April 1996. The Commission of Inquiry investigated the circumstances surrounding a number of events that occurred in April 1994 at the Prison for Women in Kingston. Among other issues, the Commission's findings of fact dealt with the segregation unit at the Prison for Women, strip searches, body cavity searches, involuntary transfers, and the complaint and grievance process. Madame Justice Arbour's Report proposed a number of recommendations to address broader systemic concerns involving compliance with the rule of law in the management of segregation, accountability in operations, cross-gender staffing, Aboriginal women offenders and the future of women's corrections in Canada.
99. Madame Justice Arbour's report has had a major and far-reaching impact on the Correctional Service in the development of an organizational culture more respectful of offender rights. As noted in Canada's Third Report, the majority of Madame Justice Arbour's recommendations were accepted by Correctional Service and have since been implemented. The most significant developments to date include:
- amendments to prohibit male staff from participating in or witnessing a strip search of a female offender, even in emergency situations
 - the appointment of the first Deputy Commissioner for Women in June 1996
 - a provision that all National Boards of Investigation include a community member independent of the Correctional Service, and that convening orders for Boards of Investigation include reference to legal compliance
 - a prohibition against using, as a first line of response, Institutional Emergency Response Teams consisting of male staff in women's facilities
 - the appointment of a Monitor to report on the implementation of cross-gender staffing policy
 - compensation to the offenders involved in the Prison for Women incident, which has been negotiated and settled

⁵ The OCI is independent of Correctional Service Canada and acts as an ombudsman for federally sentenced offenders. Further information on the OCI is provided later in this report.

Developments Respecting Correctional Institutions for Women

100. In September 1996, there were 45-50 women classified as maximum security. Since that time, the number of maximum security federally sentenced women has decreased significantly. The majority (93 percent) of women offenders are now at minimum and medium security classification. Over the past two years, the number of women classified as maximum security has averaged between 25-30.
101. Women classified as maximum security represent approximately 7 percent of the women offender population, compared to 12 percent of the male offender population being classified as maximum security. The overall lower risk of women offenders is also reflected in the fact that there is a greater proportion of women offenders in the community than incarcerated. Approximately 60 percent of women offenders are in the community, compared to approximately 40 percent of men offenders.
102. Between August 1995 and January 1997, the Correctional Service of Canada opened five new regional facilities for women offenders, including the Okimaw Ohci Aboriginal Healing Lodge located on the Nekaneet Reserve, near Maple Creek, Saskatchewan. Prior to 1995, there was only one federal facility for women offenders in Canada — the Prison for Women located in Kingston, Ontario (the focus of Justice Arbour's inquiry). All women sentenced to a federal term of incarceration were transferred to the Prison for Women, regardless of where they lived or had committed their offence(s). All women offenders were incarcerated in a maximum security environment, irrespective of their individual security ratings.
103. In 1996, shortly after most of the women at the Prison for Women were transferred to the regional facilities, it became evident that a small portion of the population (approximately 15 percent) was unable to function in the new facilities' community living environment. These women required a greater degree of structure, intervention and control. As an interim measure, Correctional Service incarcerated women offenders classified as maximum security in three units co-located within existing male facilities in Saskatchewan, Québec and Nova Scotia. These co-located units are physically separate from the remainder of the institution in terms of accommodation, programs and exercise. No contact is permitted between male and female inmates.

104. At the time of their transfer, the Correctional Service of Canada made a commitment to develop a national strategy for high-risk, high-need women offenders. The Solicitor General of Canada announced the details of a National Strategy for High Need Women Offenders on September 3, 1999. Over the next two years, "high needs" women were to be transferred from the Prison for Women and the units co-located in men's institutions to specially designed Enhanced Security Units and Structured Living Environment houses within the perimeters of the regional women's facilities. The Enhanced Security Units provide a high level of intervention and supervision for approximately 30 women across Canada now classified as maximum security. Thirty-five other offenders who have special needs and/or mental health problems will be placed in the Structured Living Environment houses.
105. The National Strategy included a commitment to close the Prison for Women, as well as the units co-located within the men's institutions, by the fall of 2001. However, on July 6, 2000, months ahead of initial forecasts, the Solicitor General officially announced the closure of the Prison for Women. The closing of this infamous prison after 66 years in operation is a concrete symbol of the government's desire to establish a more humane, fair, safe and effective approach to the management of correctional services for women. Today, nearly all of the approximately 350 federal women offenders in custody live in the five new facilities.

Cross-Gender Monitoring

106. Fulfilling a recommendation of the Commission of Inquiry, an independent Monitor was appointed to assess and report to the Deputy Commissioner for Women, over a three-year period commencing January 1998, on the impact of cross-gender staffing in the living units of the new regional women's facilities. Correctional Service is actively addressing all issues raised in the reports of the independent Monitor. In its second annual report, released in January 2000, the Monitor proposed for consultation and discussion several interim recommendations which would permit male staff to remain in front-line positions provided certain conditions and restrictions continue to be met. These include the following: (1) current recruitment, screening and training policies and procedures remain in place; (2) appropriate roles for male staff are enforced; and (3) men do not exceed 20 percent of the Primary Worker complement.
107. Since the implementation of cross-gender staffing at the regional facilities, there have been no reported instances of sexual harassment, abuse or exploitation of women offenders by male Primary Workers brought to the attention of the Correctional Service of Canada. The third and final report will be released in 2001.

Safeguards with Respect to Strip and Body Cavity Searches of Inmates

108. Policies governing searches and seizure of contraband have been amended in three areas, responding to observations or recommendations of the Commission of Inquiry. The amendments provide for an explicit, national policy standard that requires a routine, rather than discretionary, strip search of inmates admitted to administrative segregation or as soon thereafter as circumstances permit, rendering the directive in line with general practice. Amendments also include a prohibition against male staff from participating in or witnessing a strip search of a female offender at any time, even in emergency situations.
109. With the provision of the new policy, staff are now required to provide inmates a reasonable opportunity to contact legal counsel prior to seeking written consent to a body cavity search. It also requires medical professionals to perform the body cavity search in an appropriate, non-emergency environment.

Developments Respecting Conditions in Correctional Institutions for Aboriginal Persons

110. Canada recognizes that the over-representation of Aboriginal people in correctional institutions is one of the most pressing matters facing effective corrections today.
111. The Correctional Service of Canada has developed a National Strategy on Aboriginal Corrections, which focuses on advancing effective corrections with respect to Aboriginal persons. With culturally appropriate programs and a greater role for the Aboriginal community in corrections, it is expected that the reintegration potential for Aboriginal offenders will be increased, thereby enhancing the opportunities for them to be safely reintegrated into their communities.
112. In 1992, the *Corrections and Conditional Release Act* (CCRA) established sections 81 and 84 to further increase the involvement of Aboriginal communities in the provision of correctional services to Aboriginal offenders.
113. A comprehensive Aboriginal strategy was set out in 1997-1998 with the following components: (1) Strengthened Institutional Programming; (2) Aboriginal Community Corrections; (3) Resourcing; (4) Communications/Information; (5) Inter-Sectoral/Partnerships; and (6) Aboriginal Employment. In March of 1999, the Correctional Service of Canada approved the Framework on the Enhanced Role of Aboriginal Communities in Corrections. Funds were approved for these programs on July 27, 2000.

114. Federal institutions have started introducing Aboriginal-focussed healing programs and curriculum and have initiated the development of Healing Lodges in various parts of the country. Currently, there are five Healing Lodges in operation and another two are under construction. The Minister has approved construction of additional Healing Lodges to total an additional 120 beds as part of the Enhanced Role Initiative, reflective of the Service's respect of the physical space and programming needs of Aboriginal culture. Conversions of three existing federal institutions are also under way.
115. Correctional Service recognizes that Healing Lodges allow for the needs of Aboriginal offenders under federal sentence to be addressed through Aboriginal teachings, ceremonies, contact with Elders and children, and interaction with nature. Program delivery is premised on individualized plans, a holistic approach, interactive relationships with the community and a focus on release preparation.
116. Correctional Service continues to consult with Aboriginal leaders, federal and provincial governments, and service providers, in order to address the disproportionate rate of incarceration of Aboriginal offenders and to develop necessary interventions. In addition, Correctional Service is working with other federal departments, provincial agencies and international contacts to further these objectives and developments.

Inmate Discipline

117. Inmate discipline is intended to be corrective in nature, promoting individual responsibility and accountability. Sanctions are applied proportionate to the seriousness of the offence and the degree of responsibility the inmate bears for its commission. Sanctions for an offender found guilty of a minor disciplinary offence range from a warning or a verbal reprimand to a loss of privileges⁶ for up to seven days, a fine or performance of extra duties. For more serious offences, an offender may lose privileges for up to 30 days, or be segregated from other inmates.
118. An Independent Chairperson conducts the hearing of a serious disciplinary offence while minor offences are presided over by the Institutional Head. Upon appeal by the aggrieved party, the Trial Division of the Federal Court may review the decision of the Independent Chairperson.
119. Disciplinary segregation is a sanction imposed upon offenders charged and found guilty of a serious disciplinary offence, and may not exceed 30 days for a single offence or 45 days for multiple offences. Segregated inmates are accorded the same rights, privileges

⁶ Loss of privileges may include, for example, a prohibition to participate in extra-curricular activities not indicated in the offenders' Correctional Plan.

and conditions as those extended to inmates in the general population, except those that require the association of other inmates, or that cannot reasonably be given owing to limitations specific to the administrative segregation area, or to security requirements.

Administrative Segregation

120. Administrative segregation is considered an exceptional measure, to be used only for specific safety and security reasons and only if there is no other reasonable alternative. Although the CCRA does not specify the maximum length of time for an inmate's stay in administrative segregation, the Act does require that segregated inmates be returned to the general population in the institution, or in another institution, at the earliest appropriate time.
121. Throughout an inmate's confinement in administrative segregation there are mandated reviews and hearings that must be conducted at specific intervals. An inmate involuntarily placed in administrative segregation shall receive a written explanation outlining the reasons for his segregated status within one working day of the placement. A Segregation Review Board, consisting of Correctional Service personnel, conducts review hearings of cases where inmates are involuntarily segregated 5 working days after placement, on the 30th calendar day after placement, and at least every 30 days thereafter, for as long as the inmate remains in segregation.
122. In order to ensure that segregated inmates understand their procedural rights, they are notified in writing of the review dates, their right to attend and the subsequent recommendation of the Review Board within 48 hours of the decision.
123. An offender's state of health and health care needs must be taken into account in all decisions relating to administrative segregation. A written psychological or psychiatric opinion respecting the offender's capacity to remain in segregation is required at least once every 30 consecutive days of segregation. Visits to segregated units by senior institutional staff, as well as health care professionals, are also conducted on a daily basis.
124. Following the submission of Madame Justice Arbour's report, Correctional Service established a Task Force on Segregation in July 1996. In January 1997, a new Commissioner's Directive on administrative segregation was issued that explicitly acknowledged an offender's right to retain and instruct counsel immediately upon placement in segregation. In 1998, this provision was further clarified in that the delay to contact legal counsel would not exceed 24 hours. Madame Justice Arbour's concern that segregated offenders are entitled to one hour of daily exercise was also recognized. The Task Force, consisting of members from both within and outside Correctional Service, reported its findings in March 1997.

125. Responding to specific concerns raised by the Commission of Inquiry and consistent with the Task Force's advice, a number of initiatives, including national audits of segregation units, training standards and an Enhanced Segregation Review Model were undertaken to strengthen compliance with the procedural requirements of the law. Correctional Service implemented an enhanced segregation review model beginning in 1997. The enhanced model includes the designation of a Regional Segregation Oversight Manager, responsible for reviewing the case of any inmate in administrative segregation every 60 days. The Oversight Manager monitors all aspects of the administrative segregation review process, ensuring that segregation is used as a matter of last resort and that segregation is run in compliance with the law.
126. In October 2000, the Government of Canada responded to a parliamentary sub-committee on the *Conditions and Correctional Release Act* (CCRA), and proposed an Enhanced Segregation Review process that includes external membership. This process provides the proper balance between independent adjudication and the promotion of appropriate accountability by the Correctional Service of Canada. This model will be implemented on a pilot basis in all regions and a detailed independent evaluation will be undertaken. The development of the pilot may be guided by a steering committee comprised of internal and external members.
127. Correctional Service reports that during 1999-2000, there were 2,305 admissions to voluntary administrative segregation and 5,588 admissions to involuntary administrative segregation. Of those admissions to involuntary administrative segregation, 10.8 percent (603) lasted for more than 60 days.

Special Handling Unit

128. As the most secure facility in the Correctional Service of Canada, the Special Handling Unit (SHU) is reserved for inmates who have proven to be too dangerous for the safety of staff and other inmates to be managed in an operational maximum security facility. With the closure of the Prairies SHU in October 1997, Correctional Service now operates one SHU at the Regional Reception Centre in Ste-Anne-des-Plaines, which is national in scope and operated by the Québec Region on behalf of Correctional Service. After an inmate has been transferred to the SHU for assessment by way of an involuntary transfer under the authority of the concerned Regional Deputy Commissioner, formal admission and transfer from the SHU are decided by the National Review Committee (NRC) following a thorough assessment period to determine if the inmate meets the criteria, or if the risk could be more appropriately managed in a maximum security facility.
129. The NRC submitted its annual report in May 2000, which outlines the basis upon which it renders a decision, the timeframes during which these are executed, the population profile

- and details pertaining to the duration of inmate incarceration in the SHU. It also offers a general directory of the programs offered which meet the specific needs of their inmate population, with the continuation of its mandate to assist SHU inmates to behave in a responsible manner, so as to facilitate their integration in a maximum security institution.
130. As of March 31, 2000, the SHU population of 77 inmates represented 0.6 of 1 percent of Correctional Service's total incarcerated male population, an increase of 10 from the previous year.
131. The inmates transferred to the SHU for assessment and then denied admission by the NRC are spending on average less than four months at the SHU before being transferred out. This is indicative of continued improvements in this area, as in 1996-1997 an average stay of 9.43 months was reported.
132. All inmates incarcerated at the SHU have their case reviewed every four months by the NRC to determine the maintenance of SHU status or for transfer to a maximum security facility.
133. Overall, the SHU has experienced a substantial decrease in the timeframes for the transfer of offenders from the SHU, following a decision by the NRC. These timeframes continue to be monitored closely by the NRC through interim quarterly reports.

Working Group on Human Rights

134. In May 1997, the Correctional Service of Canada established a Working Group on Human Rights, chaired by Maxwell Yalden, former Chief Commissioner of the Canadian Human Rights Commission and currently a member of the United Nations Human Rights Committee. The Working Group reviewed Correctional Service's international and domestic human rights obligations and developed recommendations to ensure compliance with its human rights commitments. The Working Group reported its findings and recommendations in December 1997. A follow-up study of the human rights dimensions of community corrections was completed in May 1999. These two reports affirm that Canada's correctional system is a sound reflection of the rule of law in human rights matters and that Correctional Service must remain scrupulously vigilant in monitoring and respecting the rights of individuals under its care and custody.

International Relations

135. The Correctional Service of Canada has developed a much acclaimed program of international work in corrections and criminal justice reform and development. For example, Correctional Service has pursued correctional reform initiatives in Lithuania

and has been actively involved in peace building efforts and humanitarian aid (e.g., a shipment of boots for correctional officers) in Kosovo. Correctional Service has worked with its foreign counterparts to bring about change to these justice systems through the provision of technical expertise and advice, and the sharing of correctional knowledge and best practices. Many countries now actively seek out Canada's help in providing technical assistance and expert advice in support of their efforts to develop their own corrections and criminal justice systems. Correctional Service has, over the past years, provided technical assistance to such countries as Haiti, Namibia, Ghana, Bahamas, Bermuda, Cameroon, Benin and Mozambique.

Immigration

136. The Government of Canada is of the view that withholding a person's liberty is a serious matter and this decision should not be taken lightly. The *Immigration Act* contains provisions that permit detention of individuals, but it also contains legislated provisions for the review of this decision on a regular basis. Detention facilities are accessible to the public, and detention reviews are carried out in public.
137. Citizenship and Immigration Canada (CIC) issued new detention policy guidelines on October 28, 1998, to improve consistency in detention decisions made by Department officials. These guidelines were developed in light of Canada's domestic and international human rights obligations, and CIC employees were given training on them.
138. The Chair of the Immigration and Refugee Board issued "Guidelines on Detention," effective March 12, 1998. These guidelines were developed in light of Canada's domestic and international human rights obligations, and are to be applied by immigration adjudicators and members of the Adjudication Division of the Board.
139. Where a person is under the age of 18 years, and especially in cases of unaccompanied minors, the decision to detain is always guided by article 3 of the *Convention on the Rights of the Child*, which provides that, in all actions, the best interests of the child shall be a primary consideration. The government acknowledges that under most circumstances, the best interests of the child are better served by not detaining. The detention of minors is used as a last resort; a preferred option is to have minors released into the care of provincial child welfare agencies. When minors are detained, CIC makes every effort to ensure that unaccompanied minors have separate quarters from the adult population, that on-site medical staff are available, and that suitable programs, including access to education, are provided. Children in detention are closely monitored and have access to common areas where toys, games, television, books and outdoor recreation activities are made available. A working group within the Department has been formed to examine existing policies and procedures for minors, and to identify where further

guidelines, policies or practices need to be developed. Once an initial assessment has been completed, stakeholders will be invited to participate in the process.

140. Citizenship and Immigration Canada facilities have been visited by organizations such as the UN High Commissioner for Refugees, the UN Special Rapporteur on the Human Rights of Migrants (in September 2000) and the Canadian Council for Refugees. At the request of the Government of Canada, the Inter-American Commission for Human Rights visited Canada in the fall of 1997. The Commission met privately with detainees in facilities in Toronto and Montréal and also observed detention review hearings. The Commission concluded that the immigration detention centres appeared to meet the generally applicable minimum standards for detention. CIC is currently discussing with the Canadian Red Cross the possibility of establishing a formal, structured monitoring program.
141. Immigration officials are actively researching and examining alternatives for a more suitable facility to replace the existing immigration detention centre in Toronto, Ontario. CIC is also considering a renovation and building proposal to improve its detention facility in Laval, Québec, which houses women and minor children. New facilities, as well as renovations to existing facilities, will be in accordance with the standards for immigration detention centres.

Article 12: Prompt and Impartial Investigation, and Article 13: Allegations of Torture

Correctional Service

142. The Correctional Service of Canada is responsible for the safety and protection of federally sentenced offenders under its jurisdiction from torture. It is policy to separate the offender(s) from an alleged aggressor by transferring one or more of the parties, or through the use of segregation to ensure the protection of the complainant. Correctional Service also monitors existing and possible incompatibles in its offender management database.
143. Between April 1999 and March 2000, Correctional Service recorded 75 major violent incidents, involving eight inmate murders, two major assaults on staff, 43 major assaults on inmates, six major inmate fights, five cases of hostage taking and 11 suicides. Investigations of these incidents include the provision of a more focussed mechanism for disseminating information and direction, as well as corrective action.

144. Correctional Service has recently established a Suicide Review Committee to examine the findings and recommendations from individual suicide investigations and to bring summary recommendations to the attention of senior management.
145. Correctional Service administers a complaint and three-level grievance process. This provides opportunities for informal resolution at the initial stage and subsequent access to higher levels of authority. If an offender is unable or chooses not to resolve a complaint through discussions with staff, a written grievance may be submitted to the Institutional Head or District Director. If the offender is dissatisfied with the rendered decision or if he/she feels that action was not taken in accordance with the decision, a written grievance may be submitted to the Regional Deputy Coordinator. The third and final stage of the Offender Complaints and Grievances process involves a grievance submitted to the Assistant Commissioner, Corporate Development, at National Headquarters. The decision rendered by the third level may be appealed at court. The offender has the option to mediate the complaint at all levels and at any stage of its progress.
146. The grievance system embodies the principles of fairness, confidentiality and accessibility to all offenders without negative consequences. Complaints that significantly impact retained rights and freedoms are assigned priority for investigation, resolution and written response. The Deputy Commissioner for Women reviews all national level grievances submitted by women offenders.
147. From April 1995 to March 2000, a total of 79,560 complaints and 31,362 grievances were recorded. Of these, 94,607 complaints and grievances were resolved at the institutional level, and 5,316 complaints were forwarded to the national level for investigation and response — 11 of which dealt with use of force. Nine of these eleven complaints were dismissed after investigation, and the remaining two were upheld in part for reasons unrelated to the use of force.

Office of the Correctional Investigator

148. Offender complaints may also be made, in confidence, to the Correctional Investigator, who is independent of Correctional Service and acts as an ombudsman for federally sentenced offenders. Investigations can be undertaken at the Correctional Investigator's own initiative, at the request of the Solicitor General of Canada, or upon receipt of a complaint lodged by or on behalf of an offender. The Correctional Investigator reports to Parliament through the Minister of the Solicitor General of Canada. Investigators working for the Office of the Correctional Investigator have full access to federal penitentiaries and parole offices, as well as any information held or controlled by Correctional Service. Each year the Correctional Investigator processes approximately 5,000 complaints. The

Correctional Investigator is also mandated to review Correctional Service investigative reports concerning incidents where an inmate has died or suffered serious bodily injury.

Offender Access to Legal Assistance and Privileged Correspondents

149. Offenders are provided with reasonable access to legal counsel, to the courts and their agents, as well as appropriate legal and regulatory documents. An offender is informed of his/her right to legal counsel and given reasonable opportunity to retain and instruct legal counsel, without delay:
- upon arrest
 - prior to a disciplinary hearing on a serious offence
 - prior to consenting to a body cavity search
 - following notification of an involuntary transfer or completion of an emergency transfer, and
 - in any case within not more than 24 hours following placement in administrative segregation
150. Offenders may write to a number of privileged correspondents under sealed envelope. Privileged correspondents include, but are not limited to: Members of Parliament, Provincial Legislatures and the Canadian Senate; the Canadian Human Rights Commission; Official Languages, Information and Privacy Commissioners; legal counsel; court judges and provincial ombudspersons. Offenders also have recourse to the Federal Court.

Royal Canadian Mounted Police Public Complaints Commission

151. The Royal Canadian Mounted Police (RCMP) Public Complaints Commission (the Commission) was created in 1988 as an independent, civilian agency (not part of the RCMP) with a mandate to oversee Canada's national police force. The Commission receives complaints from the public about the conduct of members of the RCMP and, pursuant to the legislation, initially must refer these to the RCMP for investigation and disposition. If the person who made the complaint (the complainant) is not satisfied with how the RCMP has dealt with the complaint, he/she has the right to ask for an independent review. The Commission may also initiate investigations, public hearings and hearings in the public interest.
152. The mandate of the Commission is set out in Parts VI and VII of the *Royal Canadian Mounted Police Act*. Its main activities are:
- receiving complaints from the public

- reviewing the RCMP disposition of complaints when requested to do so by complainants who are not satisfied with the RCMP's disposition of their complaints, and
- conducting investigations and hearings

153. Complaints may arise as follows:

- from members of the public, directly to the RCMP
- from members of the public, to the Commission or to provincial policing authorities, and
- if initiated by the Chair of the Commission

154. The Commission is not a decision-making body; rather, it submits reports to the RCMP Commissioner that may include recommendations after public complaints have been investigated and/or reviewed. These reports are forwarded to the Solicitor General, who is the Minister responsible for the RCMP. Such recommendations may deal with specific matters of conduct or address broad issues relating to RCMP policy and practice. The Commission carries out its functions as objectively as possible. When evaluating a complaint, the Commission does not act as an advocate either for the complainant or for members of the RCMP. Rather, its role is to conduct an independent inquiry and reach objective conclusions based on the available information.

155. There are about 2,500 complains a year. Approximately half of these are made directly to the Commission, which then refers them to the RCMP. The vast majority of these complaints are resolved by the RCMP to the satisfaction of complainants and without the necessity of further involvement on the part of the Commission. The Commission receives approximately 250 requests for review each year. For the most part, the Commission's reviews support the disposition of the complaints by the RCMP. However, in about a quarter of these review cases, the Commission disagrees with the RCMP disposition of the complaint and may make recommendations to remedy shortcomings of policy and procedure. These recommendations can result in a range of corrective actions applied to individual situations, as well as broader policy changes with application across the RCMP.

Reviews

156. Each complaint is dealt with as follows: first, the RCMP conducts an investigation; and then, the Commissioner of the RCMP reports the results of the investigation to the complainant. If the complainant is not satisfied with the RCMP disposition of the complaint and has asked for a review by the Commission, then the Commission Chair may ask the RCMP or the Commission to investigate further, that is, if the initial

investigation seems to have been inadequate or if the Chair considers that further inquiry is warranted. The Commission Chair may also initiate his/her own investigation in the public interest; or the Commission Chair may hold a public hearing.

157. If the Chair of the Commission is satisfied with the RCMP's disposition of a complaint, the Chair reports this finding in writing to the complainant, the RCMP members involved, the Commissioner of the RCMP and the Solicitor General.
158. If the Chair of the Commission is not satisfied, he/she sends an interim report to the Commissioner of the RCMP and to the Solicitor General. This report is treated as follows: first, the Commissioner of the RCMP informs the Chair and the Solicitor General in writing of any action to be taken in response to the Chair's findings and recommendations, including the rationale for decisions not to take any action. Following this, the Chair prepares a final report that includes the text of the Commissioner's response, as well as the Chair's final recommendations, if any, and sends it to the complainant, the RCMP members involved, the Commissioner of the RCMP and the Solicitor General.

Hearings

159. The Chair of the Commission has the discretion, at any time, to institute a public hearing or to inquire into a specific complaint. However, this usually happens after information gathered during an RCMP or Commission investigation has been weighed. The Commission Chair can also exercise discretion, when he/she deems it advisable in the public interest, to inquire into a complaint about conduct whether or not there was a prior investigation by the RCMP. This is called a public interest hearing. A hearing panel of one or more members of the Commission is then established to conduct the hearing.
160. An interim report by the panel sets out its findings, and makes recommendations to improve RCMP operations or to correct inadequacies that may have led to the complaint. The hearing panel sends its interim report to the Commissioner of the RCMP, the Solicitor General, the complainant, the RCMP member(s) complained against, and members of the public who ask to be informed.
161. The RCMP Commissioner is required to respond to the report indicating whether the RCMP will act on the report's findings and recommendations. If the Commissioner decides not to act on the recommendations set out in the report, the Commissioner must include the reasons for not doing so. After considering the Commissioner's response, the Chair of the Commission issues a final report.

162. For the period covering April 1999 to March 2000: 1,289 complaints have been forwarded to the RCMP for investigation; 63 complaints became reviews, 66 complaints were informally resolved by the RCMP; 10 complaints were withdrawn; and two were outside the jurisdiction of the Commission.

Canadian Forces

163. Following the report of the public inquiry into the deployment of the Canadian Forces (CF) to Somalia in 1993, which was submitted to the Governor-in-Council in June 1997, and other studies into the military justice system, the Parliament of Canada enacted significant amendments to the *National Defence Act* that came into force on September 1, 1999. Among those reforms was the establishment of an independent Director of Military Prosecutions empowered to prefer charges and conduct the prosecutions at all courts martial. In addition, a National Investigation Service was formed and given the task of investigating all serious offences. The Investigation Service is comprised of trained military police investigators and is empowered to lay charges under the *Code of Service Discipline*, independently of the operational commanders.
164. A Military Police Complaints Commission has been established with the mandate to investigate and report on any complaints about the conduct of a member of the military police. In addition, the military police may complain to the Commission with regard to any perceived interference in a police investigation. This serves to ensure that the investigation of offences is carried out in an independent and impartial manner.
165. The courts martial of the CF members arising from the events in Somalia in 1993 were reported in Canada's Third Report. In a preliminary motion at his court martial, Master Corporal Matchee was found unfit to stand trial by reason of a mental disorder, namely, permanent, organic brain damage. Should his condition ever improve sufficiently, Master Corporal Matchee may be subject to a resumed trial on the charges of the second degree murder and torture of Shidane Arone. Under Canadian law, the case must be reviewed in court every two years to determine whether the prosecution is still in a position to adduce sufficient admissible evidence to put the accused on trial. The most recent review concluded, on June 20, 2000, that the prosecution may adduce such evidence. The charges are therefore still before the court.

Immigration

166. With respect to persons in Immigration Detention Centres, all complaints are recorded and investigated, and the results are then communicated to the detainees. Documentation is available to all detainees which explains these complaint procedures.

Article 14: Redress and Compensation

167. If torture has occurred, the individual could sue the government for damages in the Federal Court or provincial courts. If the claim is based in whole or part on section 12 of the *Canadian Charter of Rights and Freedoms* (which prohibits cruel and unusual treatment or punishment), a court could award damages under section 24(1) of the Charter.
168. The *Crimes Against Humanity and War Crimes Act* recognizes the need to provide restitution to victims of torture. Sections 30 and 32 of this Act provide for the establishment of a Crimes Against Humanity Fund. Monies obtained through the enforcement in Canada of orders of the International Criminal Court for reparation, forfeiture or fines imposed are paid into the Fund. Additional monies paid into the Fund include any donations received and the net proceeds of the disposition of any property that is seized or restrained in relation to the commission of a proceeds or money laundering offence under this Act and that is forfeited to Her Majesty the Queen. As well, amounts paid or recovered as fines imposed in relation to proceeds of crime prosecutions under this Act will be paid into the Crimes Against Humanity Fund. The Attorney General of Canada would have the discretion to make payments out of the Fund in accordance with a request from the International Criminal Court or to appropriate beneficiaries, including the victims and their families.
169. Section 672.5(14) of the *Criminal Code* provides for victims' impact statements. It stipulates that a victim of an offence may prepare and file with the court or Review Board a written statement describing the harm done to, or loss suffered by, the victim arising from the commission of the offence.
170. On December 1, 1999, an *Act to amend the Criminal Code* (victims of crime) and another Act in consequence came into force. The objective of this legislation was to enhance the safety, security and privacy of victims of crime in the criminal justice system. This enactment also recognized that victims of crime deserve a criminal justice system that treats them with courtesy, compassion and respect and that is responsive to their needs. The key changes made to the *Criminal Code* were the following:
- to ensure that victims are informed about opportunities to prepare a victim impact statement and permit victims to read the statement out loud in Court if they choose
 - to require police and judges to consider the safety of victims in all bail decisions
 - to make it easier for victims and witnesses to participate in trials by expanding protections for young victims and witnesses from personal cross-examination by accused persons representing themselves; expanding opportunities for victims and witnesses to have a support person present when giving testimony; and permitting a

judge to ban the publication of the identity of victims and witnesses in appropriate circumstances, and

- to require all offenders to pay an automatic victim surcharge (an additional monetary penalty), which will increase revenue for provinces and territories to expand and improve victim services

171. The grievance procedure in section 74 of the *Corrections and Conditional Release Regulations* does not expressly provide for compensation if a grievance is upheld. Before compensation would be considered, the inmate would have to show some quantifiable damage. In that event, a decision may be made to pay compensation, either as settlement of a claim if Correctional Service is liable, or as an *ex gratia* payment.

Article 15: Statements of Torture as Evidence in Proceedings

172. Section 269.1 of the *Criminal Code* stipulates that in any proceedings over which the Parliament of Canada has jurisdiction, any statement obtained as a result of the commission of torture under this section is inadmissible in evidence, except as evidence that the statement was so obtained.
173. In *India v. Singh* (1996), 108 Canadian Criminal Cases (3d) 274, the Government of India requested the extradition of the alleged fugitive Singh on the basis of a charge of conspiracy to commit murder. The fugitive argued that most of the evidence relied upon by the requesting state was inadmissible and that in any event there was insufficient evidence to support his committal for extradition. Oliver J. of the British Columbia Supreme Court stated that, as an extradition judge, his role was to determine whether there was sufficient evidence to order the fugitive committed for surrender. In examining the evidence, Oliver J. said that the burden of proving that the confessional statements were made as a result of the commission of torture rested upon the fugitive who made that allegation. He also said that undoubtedly the individuals who were alleged by the defence to have participated in acts of torture were officials within the meaning of section 269.1(2)(d) of the *Criminal Code*. In the case of Singh's statement, in the absence of any denial on the part of the alleged torturers, he held that it was established, on a balance of probabilities, that the detainee was tortured, and having regard to section 269.1(4) of the *Criminal Code*, the confessional statement of the detainee was inadmissible. Oliver J. finally denied the application for a warrant of committal pursuant to section 18 of the *Extradition Act*.

Article 16: Prevention of Other Acts of Cruel, Inhuman or Degrading Treatment or Punishment

Corporal Punishment

174. Section 43 of the *Criminal Code* provides a defence to a criminal charge to parents, schoolteachers and other persons standing in the place of a parent, if that parent, schoolteacher or other individual *in loco parentis* exercises reasonable force towards a pupil or child and if that force is for corrective purposes.
175. The Government of Canada's response to the issue of corporal punishment has been two-fold. First, through Health Canada and the Department of Justice, the government has supported parenting education measures that advocate against the use of corporal punishment and encourage the use of other methods of child discipline. Second, the criminal law continues to prohibit the abuse of children. In this regard, it should be noted that Canadian children are protected not only by criminal law, but also by provincial and territorial child protection legislation which safeguards the welfare of children.
176. In 1999, the Canadian Foundation for Children, Youth and the Law instituted a constitutional challenge under the *Canadian Charter of Rights and Freedoms* to section 43 of the *Criminal Code*. The Foundation argued that section 43 of the *Criminal Code* infringes upon children's rights under the following sections of the Charter: section 7 (the right to life, liberty and security of the person, and the right not to be deprived thereof except in accordance with the principles of fundamental justice), section 12 (the right against cruel and unusual treatment or punishment) and section 15 (equality rights). The Foundation also argued that this section of the *Criminal Code* was contrary to the *Convention on the Rights of the Child*.
177. In its arguments, the Government of Canada specifically stated that it did not advocate or support the use of corporal punishment as a means of child discipline and referred to its supporting educational materials and activities. However, the government supported its existing criminal law approach to the issue, namely, to criminalize the use of unreasonable corrective measures by parents, teachers or others *in loco parentis*, but not to impose criminal sanctions for the use of normative discipline that is undertaken in a reasonable way and that takes into account the needs and the best interests of a child.
178. The Court agreed with the arguments of the government and found section 43 of the *Criminal Code* was constitutional. The Ontario Court of Appeal (*Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)*, [2002] O.J. No. 61) upheld the constitutionality of section 43 of the *Criminal Code* and found that it reflects a reasonable balance of the interests of children, parents, teachers and Canadian society in

accordance with the *Canadian Charter of Rights and Freedoms*. In that case, the Court of Appeal held that section 43 is not a legislative foundation for any state imposed punishment on a child and does not subject a child to treatment by the state. The Court also concluded that:

"The section permits limited physical punishment of the child by a limited class of people without the punishment being a criminal assault. . . .

"For exemption from the criminal law this section requires that the force be applied to the child by a parent, surrogate parent or teacher. The force must be reasonable in the circumstances which will inevitably include consideration of the age and character of the child, the circumstances of the punishment, its gravity, the misconduct of the child giving rise to it, the likely effect of the punishment on the child and whether the child suffered any injuries. Finally, the person applying the force must intend it for 'correction' and the child being 'corrected' must be capable of learning from the correction.

"... the state interest is to avoid the harm to family life that could come with the criminalizing of this conduct."

179. The Canadian Foundation for Children, Youth and the Law is seeking leave to appeal to the Supreme Court of Canada the judgment rendered by the Ontario Court of Appeal.
180. *An Act to amend the Criminal Code (child prostitution, child sex tourism, criminal harassment, and female genital mutilation, S.C. 1997, c. 6)* entered into force on May 26, 1997. It provides increased protection to women and children against abuse and exploitation. These reforms strengthen the criminal justice system's response to child prostitution, whether within or outside Canada, by creating tougher sentences for those who use violence to force children into prostitution for profit, and by instituting measures to make it easier for child victims to testify against their exploiters.
181. The *Criminal Code* was also amended to specifically state that the practice of female genital mutilation (FGM) is illegal in Canada. This amendment will serve as a useful tool in the government's efforts to educate Canadians regarding the health risks associated with this practice. In addition to these *Criminal Code* amendments, the government is actively involved in an educational program available to the communities where the practice is more prevalent.

Response to Concerns and Recommendations of the Committee against Torture Issued in November 2000

Use of Pepper Spray — Asia-Pacific Economic Cooperation (APEC) Hearing (paragraph 58(a))

182. In the aftermath of the Royal Canadian Mounted Police (RCMP) involvement in demonstrations at the University of British Columbia during the Asia-Pacific Economic Cooperation (APEC) Conference in November 1997, the RCMP Public Complaints Commission (whose mandate is explained earlier in this report) received a large number of complaints about the conduct of certain members of the RCMP during those events. As a consequence, the Chair of the Commission instituted a public interest hearing into these matters. In the conduct of its work, the hearing was expected to examine, among other things, aspects of complaints regarding the use of force (i.e., use of pepper spray, dog handling and the use of physical force), interference with freedom of speech and treatment of people detained at police stations.
183. During this hearing, various parties brought legal challenges to the Federal Court of Canada. It was originally expected that the hearing of witnesses would be complete by the end of 1999. However, the sheer number of witnesses to be heard and the unprecedented number of legal and other issues that had to be dealt with meant that testimony from witnesses did not wrap up until March 31, 2000. Between March 1999 and April 2000, the Chair, Mr. Justice Ted Hughes, heard evidence from 156 witnesses. Final submissions from counsel were completed in June 2000. The Public Complaints Commission's final report on the APEC public interest hearing, including the written response from the Commissioner of the RCMP, will soon be made available to the Solicitor General, all parties to the hearing and to the public. It will also be available on the Commission website: <http://www.cpc-cpp.gc.ca/ereleases.asp>.

Implementation of Madame Justice Arbour's Report

184. Madame Justice Arbour's Report was submitted to the Solicitor General of Canada in April 1996. The Correctional Service of Canada subsequently developed a comprehensive action plan to respond to the recommendations of the Arbour Report.
185. The majority of the recommendations from the Arbour Report have been implemented, including:
- the appointment of the first Deputy Commissioner for Women, Nancy Stableforth, in June 1996

- amendment of policy to ensure that male staff never participate in or witness a strip search of a female offender
- Institutional Emergency Response Teams (IERT) consisting of male staff will not be used as a first response in women's facilities; also, if and when a male IERT is used as a back-up response, their role will be to contain the situation only
- a provision that all National Boards of Investigation include a community member independent of Correctional Service and that convening orders for Boards of Investigation include reference to legal compliance
- the appointment of a Monitor to report on the implementation of cross-gender staffing policy
- compensation to the inmates involved in the Prison for Women (PFW) incident has been negotiated and settled

186. Several of the recommendations speak to issues which Correctional Service considers to be ongoing operational issues, for example, the simplification of policy process, research on women offender issues, and collaboration with provincial and territorial corrections on women offender issues and management.
187. As recommended by Madame Justice Arbour, a position of Deputy Commissioner of Women was created. It was decided that the position would have functional rather than line authority. It was felt that placing authority for federally sentenced women's facilities outside of the regional authority for all other facilities and programs would undermine the integration of the women's program into the entire correctional structure. It was also felt that a separation of the line authority for women and male offenders would undermine the regional structure and tend to marginalize the women offender facilities. Although the Deputy Commissioner of Women does not have direct line authority for the women's facilities, as the functional authority she is actively involved in the operations of these facilities and must be consulted on all major decisions affecting women offenders.
188. In 1998, the Deputy Commissioner for Women issued a *National Operating Protocol — Front Line Staffing*. This policy describes the approved role of male operational staff and reiterates the commitment that no male staff will be involved in strip searches. The office of the Deputy Commissioner for Women reviews video tapes of use of force situations and reports of use of force with *all* offenders, to ensure compliance with the National Protocol. To date, the review has not revealed any situations where male staff have either witnessed or participated in the strip searches of women offenders. The women offenders sector of the Correctional Service of Canada will continue to review these videos of the use of force, and any allegations of breach of the national policy will be reviewed.
189. One recommendation called for independent adjudication for segregation. In October 2000, the Government of Canada responded to a parliamentary sub-committee

on the *Conditions and Correctional Release Act* and proposed an Enhanced Segregation Review process that includes external membership. The government believes this provides the proper balance between independent adjudication and the promotion of appropriate accountability by the Correctional Service of Canada. This model will be implemented on a pilot basis in all regions and a detailed independent evaluation will be undertaken. The development of the pilot may be guided by a Steering Committee comprised of internal and external members.

190. Another recommendation in progress relates to the question of the completion of the three-year project for independent monitoring of the cross-gender staffing policy in women's facilities. The Cross-Gender Staffing Monitor's first of three annual reports was released October 9, 1998. The second report was released on February 2, 2000, and the third report is scheduled for release in January 2001. Correctional Service is actively addressing any issues raised in the reports of the independent Monitor.
191. In summary, the vast majority of recommendations from Madame Justice Arbour's report have been implemented or are actively being addressed on an ongoing basis. This report has had a significant positive impact on improvements to correctional policies and programs for both women and male offenders.

Use of Force and Involuntary Sedation During Removals (paragraph 58 (c))

192. Government policy mandates that the removal of individuals from Canada be carried out in an orderly and humane manner, to ensure the safety of the individual being removed, as well as any escorting officers, flight crew and other passengers.
193. As an example of the types of situations faced by escorting officers, some individuals who object to being removed from Canada will react by causing a disturbance at the time of boarding or during a flight. Such disturbances can include physical violence towards themselves or others, shouting, screaming, spitting, and biting.
194. Standards have been set in law enforcement situations for the restraint of individuals in custody. These standards also apply to the removal of individuals from Canada. The use of restraining devices is permissible in circumstances where there is no other realistic way for the escorting officer to effect the removal in a safe and secure manner.
195. The escorting officer must have reasonable grounds to believe that an individual poses a safety or security risk before restraints can be used. Such grounds usually occur from a thorough review of the case file and all available information concerning the individual's background and temperament. If any force is used in the application of the restraining device, it must not exceed the amount necessary to control an individual's behaviour so

that removal can proceed. In cases where the use of force is necessary, the officer must comply with the reporting requirements as set out by the Department's Use of Force and Disengagement Policy. In addition to restraints, protective headgear may be used if necessary to prevent individuals from injuring themselves.

196. With respect to the involuntary sedation of individuals, the policy and practice in this area are under review. Currently, this is an extraordinary procedure, rarely used, which can be executed only with the concurrence of the courts. In such cases, the sedative must be administered by a medical doctor, who must accompany the individual and the escorting officer for the removal.

Pre-Removal Risk Assessment Serious Criminals or Security Risks (paragraph 59(b))

197. A risk assessment is made in all cases where it is alleged that someone may face torture upon removal as described under article 3 of this report. Minimal procedural guarantees are illustrated in the *Suresh* case. Each Bill that becomes law comes with training sessions to the immigration officers, including those who will be responsible for risk assessment.

Prosecutions and Defences to Prosecutions (paragraphs 58(g), 58(h), 59(c) and (d))

198. The Committee against Torture has made the recommendation to "prosecute every case of alleged torture in a territory under its jurisdiction where it does not extradite the alleged torturer and the evidence warrants it, and prior to any deportation." Most allegations that a person in Canada has committed torture derive from decisions of the Immigration and Refugee Board that a person is ineligible for refugee protection because there are reasonable grounds to believe that person has committed torture. The standard of proof required for the Board to reach such a conclusion is much lower than that required to convict a person of criminal wrongdoing in a Canadian court. Moreover, the Board's findings are usually based on the alleged torturer's own testimony before it. The *Canadian Charter of Rights and Freedoms* prohibits the use of such testimony in subsequent criminal court proceedings. Canadian law also allows the accused to remain silent during criminal investigations or prosecutions; therefore, the evidence in such cases usually does not warrant criminal prosecution in Canada. Where there is a realistic prospect of obtaining sufficient admissible evidence abroad, a criminal investigation will be pursued.

199. The Government of Canada reviewed with great attention the concern expressed in paragraph 5(h) of the Concluding Observations with regard to defences available to an accused torturer.
200. With respect to the defences of *autrefois acquit* and *autrefois convict* in the context of foreign procedures conducted for the purpose of shielding an accused from criminal responsibility, the Government of Canada holds the following view.
201. The general rule against "double jeopardy" exists in Canadian law as a form of special plea to a criminal charge. A person who has previously been subject to jeopardy may raise the special pleas of *autrefois acquit* or *autrefois convict*. Section 11(h) of the *Canadian Charter of Rights and Freedoms* establishes that any person charged with an offence has the right, if finally acquitted of the offence, not to be tried for it again, and, if finally found guilty and punished for the offence, not to be tried or punished for it again. Given its broad wording, s.11(h) is at least *prima facie* applicable to acquittals entered in foreign jurisdictions, provided that the administration of foreign justice is capable of international respect and that the accused is deserving of being accorded the fairness of section 11(h) because he or she was in real jeopardy.
202. Section 7(6) of the *Criminal Code* implements in legislation the constitutional safeguard in section 11(h) of the Charter. It provides that a person who has been tried and dealt with outside of Canada in respect of an offence in such a manner that, if that person had been tried and dealt with in Canada, he/she would be able to plead *autrefois acquit*, *autrefois convict* or pardon, and he/she would be able to plead any of these special pleas, then he/she may plead such pleas in Canada in respect of a Canadian prosecution for the same offence. This provision is clearer in excluding the possibility of a "sham" trial founding the basis for a special plea. The foreign trial must have been conducted in such manner that, if it had been a Canadian trial, the plea would be available. A "sham" trial would not meet this criteria.
203. Consequently, the protection offered by section 11(h) of the Charter and section 7(6) of the *Criminal Code* would not extend to "sham" proceedings. If an acquittal is a fraudulent one, the accused was never in jeopardy and, as such, should not be protected from a second prosecution. There has to be a real legal basis for the decision, and where a trial is a "sham," no proper legal basis for the original decision existed, and as such, a plea of *autrefois acquit* would not be available. It is also submitted that where sentencing was conducted in a manner which was manifestly unjust and unreasonable, punishment did not truly occur. As such, section 11(h) would not be engaged.
204. The Committee against Torture also suggested that the defence that an offence was committed in obedience of the law in force at the time be removed from the current

Canadian legislation. Section 269.1 of the *Criminal Code* was specifically created to fully comply with the requirements of the Convention against Torture, and includes all the elements of article 2 of the Convention. Nevertheless, the Canadian government is examining whether it would be advisable to prepare further legislative measures, taking into account all of the relevant factors.

205. Finally, the Committee recommended the removal from Canadian legislation of the defence that an accused had a motivation other than an intention to be inhumane. An intent to be inhumane is not an essential element of the crime of torture as created by section 269.1 of the *Criminal Code*.

Investigative Body (paragraph 59 (e))

206. Section 12 of the *Canadian Charter of Rights and Freedoms* provides that everyone has the right not to be subjected to any cruel and unusual treatment or punishment. It does not specifically use the word "torture," but as torture is an aggravated form of mistreatment, section 12 of the Charter also prohibits acts of torture. Section 24 of the Charter permits anyone whose Charter rights have been infringed upon or denied to apply to a court of competent jurisdiction for an appropriate and just remedy. Therefore, Canadian courts are competent to receive complaints regarding allegations of torture or any cruel and unusual treatment or punishment, and the victims can obtain redress and adequate compensation.

Training of Canadian Forces Members (paragraph 59 (f))

207. In addition to the *Code of Conduct for Canadian Forces Personnel*, there are training measures in place to ensure Canadian Forces members do not themselves commit, and can also recognize, torture, inhumane treatment or excessive use of force when it occurs. Training of both Canadian and international peacekeeping personnel — both military and civilian — on international humanitarian law and human rights law is provided at the Pearson Peacekeeping Centre and the Canadian Forces Peace Support Training Centre. A specific manual on the use of force sets out precise instructions on the permissible degrees of force and respect for rules of engagement of peacekeeping missions: *The Law of Armed Conflict at the Operational and Tactical Level* (LOAC). In 2000, Canada released a training manual on gender and peacekeeping, for use in training peacekeepers on a gender perspective to international humanitarian law and peacekeeping.
208. Additional information is provided on the *Code of Conduct for Canadian Forces Personnel* and on the LOAC manual under article 10 of this report.

Documentation

209. The following documents are filed with the Committee, along with the present report:

- *Canadian Charter of Rights and Freedoms*
- *Crimes Against Humanity and War Crimes Act*
- *Extradition Act*
- *Mutual Legal Assistance in Criminal Matters Act*
- *Code of Conduct for CF Personnel*
- *Corrections and Conditional Release Act*

PART III

Measures Adopted by the Governments of the Provinces

Newfoundland

Introduction

210. This report updates the information contained in the *Third Report of Canada on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* with respect to developments in Newfoundland between April 1996 and April 2000.

Article 2: Legislative, Administrative, Judicial or Other Measures

211. The responsibility for the delivery of Youth Correctional Services has been shared between the Department of Justice and the Department of Health and Community Services since March 1996. The Division of Corrections and Community Services, Department of Justice provides secure custody and remand services for young persons aged 12-17 years. Regional Health and Community Service Boards now administer the remaining youth correctional services, including: open custody (group homes and foster homes); community supervision (probation); alternative measures (diversion from court); and the preparation of pre-sentence reports.
212. A major independent report on Youth Secure Custody commissioned by the provincial government was submitted on April 1, 1996. All 57 recommendations have either been implemented or are in the process of being implemented, including:
- conducting exit interviews with young persons on release from custody regarding their treatment while in custody
 - replacing an antiquated youth detention facility in St. John's
 - promoting more avenues for young persons in custody to maintain contact with social workers and significant others in the community

Article 10: Education and Training

213. The Division of Corrections and Community Services has revised its policies and procedures regarding the Use of Force continuum, and is now developing a format for delivery of this training to correctional staff.

214. Clinicians who work in the mental health field are trained to diagnose and treat post-traumatic stress disorder. This would include psychiatrists and others working in the mental health field.

Article 11: Treatment of Persons Arrested, Detained or Imprisoned

215. The Division of Corrections is in the process of recruiting a qualified professional to conduct a comprehensive review of all divisional policies and procedures — including those pertaining to safety and security, and medical services, as well as offender programming and management — to ensure that such policies are current and consistent with national/international standards and conventions.

Prince Edward Island

Introduction

216. This report updates the information contained in the *Third Report of Canada on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* with respect to developments in Prince Edward Island between April 1996 and April 2000.

Article 2: Legislative, Administrative, Judicial or Other Measures

217. The following measures proscribe acts of torture or cruel and unusual punishment in Prince Edward Island (PEI):
- (a) The *Canadian Charter of Rights and Freedoms* operates in PEI, as in other provinces, via the criminal law process. An accused charged with an offence may bring a Charter application to the court, pursuant to sections 7, 9 or 12, as a defence or other factor that mitigates against the charge.
 - (b) The *Child and Family Services Act* and the *Adult Protection Act* continue to play the same role as reported in PEI's submission to the *First Report of Canada*, that is, to protect children from neglect and abuse, and to protect an adult who is unable to protect him/herself.
 - (c) The *Schools Act* protects students from harsh punishment by teachers and other school officials. Sections 6-15 of the *Schools Act, Students and Parents Regulations*, enable both a principal and a school board to suspend or expel a student under limited circumstances. These provisions set out limitations to suspension/expulsion including the requirements of just cause as defined in these regulations, the necessity of reporting the suspension to the school board, and the availability of an appeal process to student and parent.

Teachers are also subject to the *Criminal Code* and the criminal courts dealt with two cases involving sexual abuse complaints by students against their teachers. In both instances, charges were laid but no convictions were entered. As a condition of their employment, the province's teachers are required to follow the discipline policies and guidelines set by the school boards. Corporal punishment is not permitted in public

schools. Every school in PEI must distribute a student handbook setting out rules for students, and the consequences that may result from infractions.

- (d) The *Correctional Services Act* was proclaimed in 1992, replacing the *Jails Act* and the *Corrections Act*. The new Act governs the management and treatment of prisoners by provincial correction's personnel, promoting a humane standard of treatment by limiting force to the minimum amount necessary to manage extreme situations. The Act places limits on penalties for prisoners who violate rules. Section 24 of the *Correctional Services Act Regulations* sets out the specific penalties that a centre manager (formerly known as a jailer) may impose, including: withdrawal of privileges; performance of extra duties; payment for damages caused by the inmate; segregation for a maximum of four days; and forfeiture of remission time.

Segregation may be imposed for a maximum of four days but only upon approval of the Director of Correctional Services. Section 15(f) of the Regulations impose criteria for segregation, including: informing the inmate of the reason for segregation, and informing the centre manager of the segregation no more than 48 hours after it has begun. Procedures governing searches of inmates are set out in section of the Regulations. Section 15 provides an obligation that a correction officer ensure that inmates receive adequate meals, as well as medical attention where the need exists.

Article 3: Expulsion or Extradition

The Immigration Context

218. Citizenship and Immigration Canada (CIC) operates an office in Charlottetown to process refugees who arrive in PEI. CIC compiles statistics for government-sponsored refugees only, not privately sponsored claimants. The refugees who are admitted to the province are here mainly because of war and displacement in their homelands.
219. CIC funds a number of settlement programs for refugees in PEI, including: a language program through a local community college; a Resettlement Assistance Program; an income support program; and an Immigrant Settlement and Adaptation Program that applies to all immigrants, not just refugees. This latter program involves referring the refugees to agencies for personal counselling, employment training, etc.
220. The Resettlement Assistance Program is delivered by the PEI Association for Newcomers to Canada, a local non-profit organization funded by CIC, Human Resources Development Canada and Canadian Heritage. Under this program, temporary accommodations, food, money, as well as orientation to the community and Canadian currency, etc., are provided, along with assistance with locating permanent

accommodations. The Newcomers Association also sponsors a host program where volunteers are matched up with newcomers to assist with their orientation to the community, as well as the formation of a general support system. The CIC income support program provides general financial assistance to refugees for one year.

221. In 1999, 105 refugees came to PEI from Kosovo, and 62 remain after one year. In addition, 55 refugees arrived from other countries that year, including Yugoslavia, Burma, Afghanistan and Ethiopia. In 1998, there were 38 arrivals from El Salvador and Yugoslavia. In 1997, 59 refugees arrived from Ethiopia, Guatemala, Yugoslavia, Sudan, and other countries, and in 1996, 54 arrived, mainly from Guatemala and Mexico.
222. Most of the refugees arriving in the province were selected by immigration officials based on a profile of how well they would likely fit into PEI society. Under a new selection system, refugees will now be admitted on the basis of the degree of danger they are in. Many Kosovar refugees arrived in PEI under ministerial permits, or as part of an urgent protection pilot program.
223. Outside additional numbers based on urgent protection or humanitarian concern, the Government of PEI has an agreement with CIC to accommodate a certain number of refugees per year. In the year 2000, the province agreed to accept more than 60 refugees. As of August 2000, only 20 percent of this quota had arrived, although it is common for new arrivals to come in the fall.
224. As residents of the province, refugees and landed immigrants may qualify for benefits under the *Drug Cost Assistance Act* and the *Health and Community Services Act*. While basic health services are available to refugees and immigrants, there is a recognized need for this group of residents to have increased access to family physicians. The practical result of a shortage of physicians is that refugees and immigrants have trouble accessing non-emergency health services.
225. The Association would like to see an increase in awareness of the need for professional counselling and support services for refugees who have experienced extreme trauma, including torture and other human rights violations in their country of origin. The Canadian Mental Health Association issues a directory of self-help groups in PEI, but there is currently no listing for a group that specifically offers help to refugees.
226. The Canadian Centre for Victims of Torture (based in Toronto) has proposed providing training sessions for PEI settlement workers — those who work with refugee claimants. Due to staff changes at the Toronto organization, no training had taken place at the time of this report.

Article 7: Prosecution of Offences

227. Prince Edward Island complies with this article as the province must enforce the prohibition against torture in the federal *Criminal Code* (s. 245.4), and the prohibition against cruel or inhuman treatment or punishment in the *Canadian Charter of Rights and Freedoms* (s. 12).

Article 10: Education and Training

228. The Justice Institute of Canada, located in Prince Edward Island, trains police officers, correction officials, conservation enforcement officers, security personnel, and other provincial and private law enforcement officers in Atlantic Canada. Training in the use of force is given throughout the duration of these programs to ensure that officers will learn to deal with situations properly, and maintain a low incidence of allegations about inappropriate use of force in PEI. The training is based on the maxim in section 25 of the *Criminal Code* of Canada that officers use “as much force as is necessary,” and is consistent with law enforcement training in other jurisdictions. Training ranges from how to use verbal strategies such as crisis intervention, mediation and negotiation for lower intensity situations, to the use of intermediate weapons and lethal force for persons who exhibit a high level of resistance. Theory, scenarios, computer simulation and on-the-job training are also used to impart information and to develop skills.

Article 11: Treatment of Persons Arrested, Detained or Imprisoned

229. The objective of this article, to prevent cases of torture of persons arrested, detained or imprisoned, is met by PEI's *Correctional Services Act*, as described under articles 2 and 13.

Article 12: Prompt and Impartial Investigation

230. Suspected incidents of torture would be subject to police investigation as part of the enforcement of the federal *Criminal Code* provision, s. 245.4. No prosecutions have taken place under this section.
231. In addition, two provincial laws, the *Coroners Act*, R.S.P.E.I. 1957, c. 10, and the *Vital Statistics Act*, R.S.P.E.I. 1974, c. V-6, require special investigations where a person appears to have died as the result of “violence,” “misadventure,” “unlawful means,” “misconduct,” or in other suspicious or sudden circumstances. The *Vital Statistics Act* requires an investigation before a burial permit may be issued.

232. The *Coroners Act* requires that any person who has reason to believe a deceased person has died in any of the above circumstances must immediately notify the Coroner. A jail keeper or superintendent must also notify the Coroner in the case of the death of a prisoner in a jail, reformatory or lock-up.

Article 13: Allegations of Torture

233. The Public Complaints Commission is an independent federal body where members of the public can submit complaints regarding the on-duty conduct of Royal Canadian Mounted Police (RCMP) officers. In PEI, the process begins when a member of the public complains to the relevant police detachment. An investigator is assigned to conduct an investigation and submit a report to the head sergeant. The sergeant then makes an internal recommendation, including a follow-up process. If the complainant is not satisfied, he/she may appeal to the Public Complaints Commission. The Commission reviews the complaint file and decides whether the investigation was properly conducted, and whether the conclusion reached was justified. The Commission then has the discretion to either ask for a follow-up from the detachment, or conduct its own investigation.
234. Between 1992 and 1996, approximately 88 complaints were made to provincial detachments in PEI, and 29 complaints were made directly to the Commission. In 1997, 13 complaints were made to provincial detachments. Three of these complaints were resolved informally after an agreement was reached with the investigating officer. The other 10 were resolved formally following a full investigation. Two of these complaints were submitted to the Public Complaints Commission which determined that the investigation and recommendations were satisfactory. In 1998, six complaints were made to provincial detachments, and one to the Public Complaints Commission. Of these seven complaints, one was resolved informally while the other six were resolved formally. In 1999, there were five complaints to provincial detachments, and seven to the Commission. Of these, three were resolved informally and nine formally.
235. Currently, in PEI, there is no mechanism for a review of municipal police officers' actions, other than a complaint to the chief of the force involved. There is no police commission in the province, but there is a complaint/investigation process which works as follows: when a person complains about the conduct of a police officer, the officer in charge of public relations investigates the complaint and reports to the chief of police.
236. Most complaints are resolved at this stage, but if the complainant is unhappy with the outcome he/she can voice concerns to the Police Committee, a subcommittee of municipal councils. The Police Committee is made up of a chair; one council member; the director of public services; and two advisors, including the chief of police and the

officer responsible for public relations. This Committee oversees the day-to-day activities of the police force to ensure that policies and procedures are being correctly followed. The police have a code of discipline and, depending upon the nature of the complaint, the process for handling complaints may involve a formal disciplinary committee that the mayor of the municipality oversees. The complainant may also contact the Attorney General if he/she feels that their complaint was not dealt with correctly or that there was an attempt to cover something up. Additionally, if it is a serious criminal matter or if the complainant deems it necessary, the Police Committee may invite an outside police agency to investigate the matter.

237. Currently, no statistics are available to determine the number of complaints to Police Committees or their disposition.
238. The *Correctional Services Act* gives the Lieutenant Governor-in-Council authority to make regulations pertaining to the treatment of inmates in provincial correction facilities. Under the 1992 *Correctional Services Act*, the Director of Community and Correctional Services is responsible for the administration of correctional services under the direction of the Attorney General. The Director may establish, amend and enforce a code of conduct for centre managers and employees. Under the old *Jails Act*, the Minister was directly responsible for the administration of the Act, and the jailer (now called the centre manager), in carrying out duties for the care, custody and discipline of inmates, reported directly to the Minister. No code of conduct was prescribed by the Act, nor was there a provision, as is contained in section 15 of the *Correctional Services Act*, for employees to be investigated and examined in regard to their conduct.

Article 14: Redress and Compensation

239. In PEI, compensation for criminal injury is available to victims who receive injuries from crimes committed after the 1989 proclamation of the *Victims of Crime Act*. To be eligible for compensation, the injury must involve actual bodily harm, which includes mental shock. Persons who incur financial loss or expenses resulting from a victim's injury or death may also apply for compensation through Victim Services, the agency responsible for administering compensation claims. If there is evidence that a crime occurred, compensation may be available, even when the offender is not apprehended or convicted. The crime must still have been reported to police, and the victim must cooperate in the investigation. Between 1996 and 1999, a total of 109 victims were compensated: 22 in 1996, 25 in 1997, 30 in 1998 and 32 in 1999.

Nova Scotia

Introduction

240. This report updates the information contained in the *Third Report of Canada on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* with respect to developments in Nova Scotia between April 1996 and April 2000.

Article 2: Legislative, Administrative, Judicial or Other Measures

241. The provincial Department of Justice enforces the provisions of the Canadian *Criminal Code*, including section 269.1, which specifically categorizes torture as an indictable offence and eliminates the defence of superior orders.
242. The Nova Scotia *Hospitals Act*, R.S.N.S. 1989, c. 208, states that, if a peace officer apprehends and detains a person for a medical examination that may result in admission to a psychiatric facility, the officer must file a full report with the Attorney General within 24 hours of the apprehension. The person detained must receive the medical examination within 24 hours of admission, and a person who is formally admitted may apply to have his or her declaration of capacity or competency reviewed by a review board.

Article 6: Custody and Other Legal Measures, and Article 7: Prosecution of Offences

243. The *Liberty of the Subject Act*, R.S.N.S. 1989, c. 253, is the provincial *habeas corpus* legislation. It guarantees that there shall be no abrogation or abridgement of the remedy by the writ of *habeas corpus* at common law and further guarantees that the remedy exists in full force and is the undeniable right of the people of the province of Nova Scotia.

Article 10: Education and Training

244. All provincial corrections officers receive a mandatory basic training course that includes an examination of the *Canadian Charter of Rights and Freedoms*. Since 1992, approximately 25 percent of corrections officers have taken additional training in Verbal Crisis Intervention, a course designed to reduce physical intervention. The training is still being offered to those officers who have not yet had the opportunity to take part. The Correctional Services Program, taught at the community college level, is developing a

Program Advisory Committee comprised of members from youth corrections, group homes, federal and provincial departments of justice and university criminology departments. The Program examines the *Canadian Charter of Rights and Freedoms* and the Nova Scotia *Human Rights Act*.

245. In March 1996, Nova Scotia became the first province in Canada to implement a province-wide Use of Force Policy. This policy addresses unnecessary force and injury to police or suspects and outlines the use of alternative methods to lethal force. Approximately 97 percent of the province's peace officers have already taken the two-day course associated with the policy; and the course will continue to be offered on a yearly basis for all officers.
246. As outlined in Canada's Third Report, the province established a "Critical Incident Investigation Task Force," comprised of representatives from the Royal Canadian Mounted Police (RCMP), municipal police, Military Police, the Department of Natural Resources, the Department of Fisheries and Ports Canada. The Task Force investigates any death or serious injury to, or caused by, a peace officer. The investigation is headed by an agency other than the agency involved in the incident and a public report is issued.

Article 11: Treatment of Persons Arrested, Detained or Imprisoned

247. The *Corrections Act*, R.S.N.S. 1989, c. 103, provides for the safe custody and security of offenders and for the inspection of lock-up facilities and compliance with prescribed standards.

Article 12: Prompt and Impartial Investigation

248. The *Fatality Inquiries Act*, R.S.N.S. 1989, c. 164, provides for an investigation into the cause and manner of the death of a person in a jail or prison, or other location where there is reasonable cause to suspect that the person died by violence or through culpable negligence.

Article 13: Allegations of Torture

249. Under the *Police Act*, R.S.N.S. 1989, c. 348, the Nova Scotia Police Commission continues to be responsible for investigating complaints against the police. Complaints that are not resolved by the Commission may be referred to the Review Board, which must hold a public hearing and provide written reasons for its decisions. The Review Board may vary or affirm penalties against officers or award costs.

- 250. Regulations made pursuant to the *Police Act* require municipal police departments to report internal disciplinary matters to the Police Commission. The Annual Report of the Nova Scotia Police Commission is made available through public libraries and the Nova Scotia government bookstore.
- 251. The *Ombudsman Act*, R.S.N.S. 1989, c. 327, authorizes staff from the Office of the Ombudsman to enter premises and investigate allegations of any offence against an inmate of a corrections facility or against a patient in a psychiatric hospital. Where other avenues of redress exist, the staff may examine both whether the process and policy is fair and, if so, whether the process was followed correctly.
- 252. The Office of the Ombudsman maintains records of correctional facilities complaints independent of those filed against the parent Department of Justice. The Office conducts monthly visits to all youth correctional facilities and maintains a Registry of Complaints which is open to both inmates and non-management staff of those facilities.

Article 14: Redress and Compensation

- 253. The *Fatal Injuries Act*, R.S.N.S. 1989, c. 163, provides for the right of family members to maintain an action and recover damages for a death caused by neglect or a wrongful act.
- 254. Under the *Proceedings Against the Crown Act*, R.S.N.S. 1989, c. 360, the government is subject to liability for torts committed by its agents and officers, including officers performing legal duties.

New Brunswick

Introduction

255. This report outlines changes made since Canada's Third Report and provides additional information regarding New Brunswick's adherence to the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. It covers the period from April 1996 to April 2000.
256. New Brunswick is committed to the principles of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* and to fully implementing the provisions of the Convention within its jurisdiction.

Article 2: Legislative, Administrative, Judicial or Other Measures

257. The *Custody and Detention of Young Persons Act*, R.S.N.B. 1973, c. C-40, recognizes and declares that young persons who commit offences have special needs and require guidance and assistance. They have rights and freedoms in their own right, including those stated in the *Canadian Charter of Rights and Freedoms* and, in particular, a right to be heard in the course of, and to participate in, the processes that lead to decisions that affect them.

Article 10: Education and Training

258. There is no training facility for police officers in New Brunswick. The regional training facility for police officers is the Atlantic Police Academy, located in Summerside, Prince Edward Island. The training of police officers is consistent with the principles of the *Canadian Charter of Rights and Freedoms*, the *Criminal Code* of Canada and the United Nations (UN) Convention against Torture, all of which are referred to in the course of the programs. Training includes information on inmate rights, procedures for handling suspects, methods of restraint and consequences of the use of force. The Atlantic Police Academy is also involved with providing continuous on-the-job training.
259. There are two nursing programs in New Brunswick, the Faculty of Nursing at the University of New Brunswick, and l'École des sciences infirmières at l'Université de Moncton. The Faculty of Nursing has introduced specific content into its Year II curriculum dealing with the care of persons who have been subjected to torture or other cruel, inhuman or degrading treatment. In Year II, III, and IV of the program, students

work in a variety of community and tertiary care agencies where application of this knowledge is reinforced. L'École des sciences infirmières has, as part of its curriculum, training on the care of victims of physical and sexual abuse, regardless of the cause of the alleged abuse. The content of some of the optional courses offered to future nurses provides discussion with respect to human rights and the spirit of the Convention against Torture. Students also receive experience within a variety of community and tertiary care settings.

260. Policy and procedures have been developed with the New Brunswick Foster Families Association to investigate allegations of abuse or neglect involving foster children who are in care of the Minister.
261. Interdepartmental Protocols for Child Victims of Abuse have been developed in order to ensure that all efforts in New Brunswick to protect children from abuse and neglect are effective and sensitive to the needs of children. In these protocols, there is a specific section in relation to Foster Homes and Children's Group Care Facilities. Specifically, the protocols prohibit the use of physical discipline in New Brunswick foster homes and group homes.
262. The University of New Brunswick Faculty of Law offers two courses directly related to the UN Convention against Torture. These courses are:
 - International Humanitarian Law 4133, which is an introduction to theories, policies, practices, and rules of the law of armed conflict and international humanitarian law
 - Human Rights Law 3908, which presents international human rights and Canadian human rights in the context of the UN Convention
263. The Department of Political Science at St. Thomas University offers many courses wherein the general topic of torture and other inhuman or degrading treatment or punishment is dealt with. These courses are: History/Human Rights 3913 — Canada and Modern War Crimes; Criminology 3243 — Corrections; Criminology 3133 — Criminal Law and the *Canadian Charter of Rights and Freedoms* (discussion on the UN Convention and on s. 12 of the Charter); Criminology 3223 — Young Offenders; and Criminology 3123 — Contemporary Issues.
264. The student chapter of Amnesty International hosted a conference at Mount Allison College that attracted students and interested citizens from eastern Canada. Among the key speakers were a number of distinguished and notable international human rights activists, such as the Executive Director of Médecins sans frontières and Stephen Lewis, Former Canadian Ambassador to the UN.

265. The Faculté de Droit (Faculty of Law) of l'Université de Moncton offers a course entitled Droits fondamentaux, specifically oriented to the study of all fundamental rights, and another entitled Droit international public, which studies human rights. In addition to those two courses, beginning in September 2000, a third course, Droit de l'immigration (immigration rights) will teach such fundamental rights as political asylum, and of specific reasons that can lead to granting political asylum like torture and cruelty.
266. Furthermore, the Department of Sociology of the Faculté des Sciences sociales is presently preparing a program for a Minor in Criminology, which is due to start in September 2000. The program will comprise two Criminology courses that would present content directly related to human rights, and specifically to those rights for which the Convention against Torture was adopted.
267. The New Brunswick Community College in Miramichi City, which runs the Correctional Techniques Program, the Youth Care Workers Program and the Criminal Justice Program, has taken steps to implement education on the Convention against Torture into these three training areas. The content on the Convention has been added to the Correctional Operations course and the Youth Care Operations course, one of which must be studied by every student in the above mentioned programs. These operations courses contain specific content dealing with: "code of conduct" guidelines for correctional workers; the *Canadian Charter of Rights and Freedoms*, with specific reference to section 12 on the legal right not to be subjected to cruel and unusual punishment; *Criminal Code* of Canada guidelines for the use of reasonable force and the Correctional Jurisdiction Policy on use of excessive force; and information on harassment in relation to co-workers and clients in the criminal justice system.
268. The New Brunswick Community College in Dieppe offers a Correctional Technique Program that integrates the *Canadian Charter of Rights and Freedoms*, with specific reference to section 12 on the legal right to not be subjected to cruel and unusual punishment, and *Criminal Code* of Canada guidelines for the use of reasonable force and the Correctional Jurisdiction Policy on use of force guidelines and policies. Starting next year, the Dieppe College will be ready to initiate the content of the UN Convention.

Article 11: Treatment of Persons Arrested, Detained or Imprisoned

269. The 1992 report *Policing Arrangements in New Brunswick: 2000 and Beyond* (the Grant Report) recommended several changes to provincial policing arrangements, including the development of professional standards for policing agencies.
270. Standards were developed through an extensive consultative process and on May 1, 1997, by virtue of section 1.1(3) of the *Police Act*, R.S.N.B. 1973, c. P-9.2, the New Brunswick

Policing Standards came into effect as Ministerial Directives. The Solicitor General directed that municipal and regional police forces in the province would have five years from this date to meet the Standards, either from within or by means of purchase of service from the Royal Canadian Mounted Police (RCMP) or a municipal or regional police force. The New Brunswick Policing Standards reflect the best-prescribed professional requirements and practices for police services and allow for local implementation flexibility.

271. The New Brunswick Policing Standards include a chapter relating to the organization and operational aspects of young offender services which, due to the special legal status of young persons/offenders, states that clear policy and procedures should be developed in accordance with the *Canadian Charter of Rights and Freedoms* and the current legislation. In addition, Part 6 of the Standards deals with prisoner/court-related operations and with issues of prisoner transportation, holding facilities and court security.

Article 13: Allegations of Torture

272. In April 1996, the Department of Public Safety established a *Police Act* Review Committee, made up of representatives from all groups with a direct interest in the delivery of policing services. The Committee's mandate is to examine the *Police Act* and to make recommendations to the Department for legislative amendments.
273. In November 1998, the *Police Act* Review Committee began an extensive review of Part III of the *Police Act* relating to complaints and the discipline of members of police forces. In view of the developments that have occurred in this area since this part of the Act was introduced, the Committee decided to conduct a full review of the discipline process, rather than simply amend specific provisions. It is anticipated that a package outlining proposed changes to the *Police Act* will be available in May 2000. At that time, the key stakeholders will review it before a recommendation is made to the government.
274. The *Police Act* empowers the New Brunswick Police Commission to investigate directly, on its own motion, in response to a complaint, or at the request of a board of police commissioners or a municipal council, any matter relating to any aspect of the policing of any area of the province. The Commission may refer a complaint related to the conduct of a member of a police force to the chief of police (so long as the chief is not the subject of the complaint), or investigate the complaint itself by appointing an investigator or conducting a hearing. The *Police Act* also requires chiefs of police to inform the Police Commission within 20 days of all complaints received. In the case where an investigation has been referred to a chief of police by the Commission, the chief must submit to the Commission the full details of the investigation within 20 days of its completion.

275. Regulation 86-49 under the *Police Act* (known as the Discipline Regulation) sets forth a Discipline Code, which provides, *inter alia*, that it is incumbent upon every police officer within the province to respect the rights of all persons, to perform his duties impartially in accordance with the law and without abusing his authority and to conduct himself/herself at all times in a manner that will not bring discredit upon his/her role as a police officer.
276. Specifically, section 39(1) of Regulation 86-49 provides that it is a major violation of the Code for any police officer to be discourteous or disrespectful toward any member of the public or to use any unnecessary force upon or apply cruel treatment to any prisoner or other person with whom he/she may come in contact in the performance of his/her duties.
277. The Discipline Code also provides that workplace harassment may constitute a major or minor violation, and includes provisions dealing with abuse of authority and discrimination.
278. Under the provisions of the *Police Act*, if a complaint results in a finding of guilt with respect to a major violation of the Code, the police officer may be disciplined in several ways, including suspension or dismissal.

Article 14: Redress and Compensation

279. The New Brunswick Department of Public Safety provides a range of services to victims of crime in the province. The mandate of the New Brunswick Victim Services Program is to provide a range of support services, ensuring that victims are informed of their rights and responsibilities, that they are referred to services and remedies available to them and that they are treated with courtesy and compassion with a minimum of inconvenience from their involvement in the criminal justice system. This program is self-sufficient, being totally funded from revenue received from a victim surcharge collected on federal and provincial offences in the province. The legislative authority for the establishment and delivery of victim services rests with the *Criminal Code* of Canada and the New Brunswick *Victim Services Act*.
280. Services provided to victims of crime include:
- provision of information on services available for victims of crime
 - support and preparation of victims to testify in court
 - assistance in preparation of victim impact statements for court, ensuring that victims are aware they may voluntarily prepare and read an impact statement in court at the time of sentencing, in accordance with the *Criminal Code* of Canada
 - provision of counselling services, including trauma counselling, to assist victims in dealing with trauma and to be able to testify in court

- referral and payment for short-term counselling by registered therapists to deal with the effects of being victimized
- crime compensation
- referrals as needed to community agencies providing services to victims of crime

281. The New Brunswick *Victim Services Act* provides for: the collection of victim surcharges on provincial offences; the provision of grants to community agencies for the delivery of services to victims, promotion of victim services, distribution of information for victim services and research on victims of crime; and the delivery of victim services in the province, including the administration of the compensation for victims of crime.
282. In 1996, the New Brunswick *Compensation for Victims of Crime Act* was repealed and the Compensation Program now falls under the Regulations of the *Victim Services Act*.

Québec

Introduction

283. The Government of Québec has undertaken to comply with the provisions of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* by adopting Decree No. 912-87, on June 10, 1987, in compliance with its internal law. Unless otherwise indicated, this report updates, to April 31, 2000, the information contained in Canada's previous reports on the application of this Convention.

Article 2: Legislative, Administrative, Judicial or Other Measures

284. Québec's *Charter of Human Rights and Freedoms*, R.S.Q., c. C-12, enacted by the National Assembly in 1975, stipulates that "every human has a right to life, and to personal security, inviolability and freedom." Legislative and administrative measures have been taken in accordance with this fundamental provision to ensure compliance with the Convention.
285. Under the *Act Respecting Police Organization*, R.S.Q., c. O-8.1, all special constables and police officers in Québec are subject to the same rules of conduct, as prescribed by the Québec Police Code of Ethics (Code de déontologie des policiers du Québec, R.R.Q., c. O-8.1, r. 1). The Police Ethics Commissioner and the Police Ethics Committee (Comité de déontologie policière) monitor compliance with this Code and receive public complaints about police conduct. In October 1997, the National Assembly passed amendments to the *Act Respecting Police Organization* with a view to amending the police code of ethics. The basic principles of the system, namely, transparency, accessibility and the independence of complementary jurisdictions, were maintained. The new legislation emphasizes conciliation as a means of resolving public complaints and as an alternative to court remedy. Among other things, the new system stipulates that all admissible complaints are subject to conciliation, except for complaints set out in the Act which must be reviewed by the Commissioner — in particular those involving death or serious injury, criminal offences, recidivism or other serious matters, as well as issues in which the public trust of police officers may be seriously compromised. The changes to the conciliation procedure also include private review of complaints as opposed to a hearing before a tribunal, since it is incumbent on the parties to express themselves without legal representation so that, together, they can reach a better understanding of the circumstances and put their agreement in writing.

Article 4: Criminalization of Torture

286. The *Criminal Code* (s. 269.1) prohibits torture of a citizen by a public official. Only one citizen invoked this provision during the period covered. The decision is still pending, as the legal proceedings provide that the accused, a member of the military, will be committed to stand trial in October 2000.

Article 10: Education and Training

287. The Québec Ministry of Public Security continued to provide training to new correctional services officers with respect to human rights and freedoms. In recent years, training has also addressed physical intervention in a double cell and positional asphyxia in situations requiring the use of force.
288. With regard to the training of police officers, the Québec Ministry of Education continues to provide college-level professional and technical training, as set out in paragraph 169 of Canada's Third Report on the application of this Convention.
289. In December 1999, a bill intended to replace the *Police Act* and the *Act Respecting Police Organization* was tabled in Québec's National Assembly. Essentially, this bill repeats the provisions regarding police operations and would incorporate ethics provisions that are currently part of the *Act Respecting Police Organization*. The bill requires all police force directors to establish occupational training plans. The bill also requires all municipalities to pass a regulation regarding the members of its police services and institutes a monitoring board for the Sûreté du Québec.
290. Bill 86 also provides for the creation of a national police school to replace the Québec Institut de police. The school would provide initial training for police patrol, investigations and police management.

Article 11: Treatment of Persons Arrested, Detained or Imprisoned

291. With respect to the police, in addition to enforcing the various actions mentioned in paragraph 173 of Canada's Third Report, the Ministry of Public Security undertook to implement the measures relating to the government's policy on conjugal violence, which was publicly released in December 1995. These actions, taken in conjunction with police services, are intended to provide for the protection, integrity and security of victims of conjugal violence and of those close to them. The implementation of various police measures to combat conjugal violence had the following positive effects:

- The vast majority of police officers register instances of conjugal violence with the Québec Police Information Centre.
 - Nearly all police officers seize any firearms present in cases of conjugal violence.
 - A large proportion of police services inform victims of the release conditions of their presumed aggressor.
292. For over two years, an awareness campaign pertaining to violence against women has been directed to the general population and to youth in particular. It seeks to make people aware of the unacceptable and criminal phenomenon of violence against women, especially in their relationship with a spouse or significant other.
293. The police services used various tools at their disposal, with regard to detention and handling, in order to respect the rights of those arrested, detained or incarcerated, including a Guide to Police Practices. This Guide is intended to ensure respect of the *Charter of Human Rights and Freedoms*, by providing, among other things, instructions on the use of force, arrest, detention and investigation techniques.
294. With respect to correctional services, the number of individuals admitted to detention facilities is dropping steadily. In 1995-96, for example, 65,461 individuals entered prison. This figure dropped to 62,985 in 1996-97, 56,954 in 1997-98 and 49,791 in 1998-99. Preliminary figures for 1999-2000 suggest that this decline in admissions is continuing. This consistent decline is the result of using alternatives to detention, such as suspension of driver's licences and more frequent imposition of community service.
295. Several directives relating to correctional services were developed or updated in order to ensure respect for individuals arrested, detained or incarcerated. Among other things, they address such issues as health care for incarcerated persons, standards for the use and application of constraint instruments, and the use of firearms.

Article 13: Allegations of Torture, and Article 14: Redress and Compensation

296. There are several types of recourse available to citizens who feel their rights have not been respected or who have been treated incorrectly. With respect to police work, all citizens can file a complaint with the Police Ethics Commissioner. The procedure followed in such cases is set out in paragraphs 87-90 of Canada's Second Report. The office of the Ethics Commissioner received 1,188 complaints in 1999-2000 (April 1, 1999 to March 30, 2000), involving 1,934 police officers. When a complaint is received, the Commissioner ensures that the complaint admissibility conditions have been met, namely: the one-year time limit set out by law within which a complaint must be made; that the allegations pertain to a member of a police service or a special constable; that this

person was on duty at the time of the alleged incidents and that the alleged conduct contravenes Québec's Police Code of Ethics. As a result, the Commissioner refused to investigate 677 complaints (56 percent), tried conciliation between the parties in 283 cases (23 percent) and decided to investigate 206 cases (17 percent). After these investigations, the Commissioner decided to commit 122 police officers to appear before the Police Ethics Board with regard to 77 cases.

297. With respect to correctional services, individuals claiming to have been mistreated by correctional services can file a complaint with civil or criminal court and, if the evidence allows, be compensated for the injustice suffered or receive a statement of guilt against the assailant. In the case of *Gauthier v. Beaumont*, [1998] 2 R.C.S. 3, an individual suspected of theft was the target of abusive conduct by officers of the Québec police service. In this instance, the Supreme Court of Canada ruled that the conduct of the police had violated the complainant's rights guaranteed under sections 1 and 4 of the Québec *Charter of Human Rights and Freedoms*. The Court sentenced the officers to pay \$50,000 in pecuniary damages and \$200,000 for emotional injury under section 49(1) of the Québec Charter. The Court also sentenced the officers to pay \$50,000 in exemplary damages under section 49(2) of the Québec Charter for intentionally infringing on the complainant's rights. In *Leroux v. Communauté Urbaine de Montréal*, [1997] R.J.Q. 1970, the Superior Court sentenced the officers and their employer to pay \$132,000 in compensation for illegal arrest and detention, insults and mistreatment of an individual who was arrested and ended up in hospital, including \$122,000 in pecuniary damages and for emotional injury under section 49(1) of the Québec Charter, and \$10,000 in exemplary damages under section 49(2) of the Québec Charter. In the decision of *Protection de la Jeunesse — 988* (1999), J.E. 99-1550, the Québec Superior Court stayed proceedings relating to an alleged theft in accordance with section 24(1) of the *Canadian Charter of Rights and Freedoms*, as reparation for the abusive use of force by police officers during the arrest of a young offender, in violation of section 12 of the Charter. In that case, it was clear that the respondent would have received either probation or discharge in any case. In *R. v. Serré* (1999), J.E. 99-1033, the Québec Court of Appeal ruled that the stay of proceedings under section 24(1) of the Canadian Charter was not appropriate, as reparation for the mistreatment inflicted by prison guards in this instance, following an attempted escape during which one of the guards was taken hostage and assaulted.
298. Two authorities in Québec, the Commission québécoise des droits de la personne et des droits de la jeunesse (Human Rights and Youth Rights Protection Commission) and the Protecteur du citoyen (ombudsman), regularly monitor and intervene in the management of detention facilities in the province. For example, the Commission has adopted an analysis grid and statement of principles regarding the use of confinement in the case of a child in compulsory foster care. In the Commission's view, confinement should only be

used in exceptional circumstances and as a last resort, if necessary. All disciplinary measures should be taken in the child's best interests.

Article 16: Prevention of Other Acts of Cruel, Inhuman or Degrading Treatment or Punishment

299. Section 43 of the *Criminal Code* stipulates that "Every schoolteacher, parent or person standing in the place of a parent is justified in using force by way of correction toward a pupil or child, as the case may be, who is under his care, if the force does not exceed what is reasonable under the circumstances." Serious consideration is currently being given to the need to retain this section.
300. During the period covered, two decisions were made citing section 43 of the *Criminal Code*. In *St-Amour v. Peterson*, [1998] R.R.A. 103 (C.S.), the Québec Superior Court concluded that a school bus driver, who was not facing any criminal charges, had used reasonable force by pushing a student blocking the centre aisle into his seat. In the case of *Laroche v. R.* (1999), J.E. 99-338, the Court of Appeal ruled that throwing a handful of sand into a child's face could not be considered as justified correction under section 43 of the *Criminal Code*, and could therefore not stand as a valid defence against a charge of assault.

Ontario

Introduction

301. The information provided in this report is an update to *Canada's Third Report on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* with respect to developments in Ontario. It covers the period from April 1996 to April 2000.

General Information

302. Torture is a criminal offence and Ontario is dedicated to strong and effective law enforcement.
303. Ontario's correctional system is going through an extensive change that will fundamentally alter the way in which services are delivered to inmates. These changes have been implemented with a focus on rebalancing the corrections system to reflect the rights of victims and to institute a meaningful consequence for offenders. In addition, a strict discipline project aimed at reducing recidivism, and specifically tailored to 16- and 17-year-old male repeat offenders, is currently under way. A structured program regimen emphasizing work skills and education has also been established throughout the young offender system.
304. Ontario is committed to ensuring that public safety is the highest priority in inmate release decisions. Strengthened parole policies, vigorous enforcement of the terms and conditions of parole, and a reduction in the parole grant rate have been effective changes in maintaining public security. Change within the corrections system is also being delivered through a large capital renewal project that will eliminate economic inefficiencies and halt the structural deterioration of the province's correctional facilities. To this end, the government is currently in the process of replacing its aging adult facilities with modern, more humane institutions.

Article 1: Definition of Torture

305. On May 21, 1996, the Ontario Human Rights Commission released its Policy on Female Genital Mutilation (FGM). It is the Commission's position that the practice of FGM offends the inherent dignity of women and girl children, and infringes on their rights as set out in the *Ontario Human Rights Code*. The Commission will, therefore, accept,

investigate and make a determination on any complaints involving FGM filed by victims of the practice or their legal guardian.

Article 2: Legislative, Administrative, Judicial or Other Measures

306. The *Ministry of Correctional Services Act* and related regulations, directives, policies, procedures, training and standards prohibit acts of mistreatment of persons in custody in Ontario's correctional facilities. The Ministry of Correctional Services monitors compliance in provincial correctional facilities.
307. In Ontario, the standards for correctional staff, facilities and inmates include:
- a statement of ethical principles — ethical standards for correctional staff in carrying out their duties
 - conditions of confinement — policies regarding the conditions of provincial correctional facilities, and standards of accommodations, programs and health care of inmates
 - principles governing confinement — principles regarding inmate rights and privileges, requirements for inmates and penalties for non-compliance
308. Under Ontario's *Police Services Act* (PSA), administered by the Ministry of the Solicitor General, municipalities are responsible for providing adequate and effective police services, and the Lieutenant Governor-in-Council has the authority to establish prescribed standards governing the delivery of adequate and effective police services.
309. Under the *Police Adequacy and Effectiveness Standards Regulation* (January 1999) of the PSA, police services must perform certain core functions and meet certain service delivery requirements, including putting in place, by the year 2001, the requirement for development of policies and procedures with respect to arrest, prisoner care and control, and criminal investigation management. This also applies to the Ontario Provincial Police (OPP).
310. The Ministry of the Solicitor General issues guidelines to assist police services boards, chiefs of police, the OPP and municipalities with their understanding and implementation of the PSA and its Regulations.
311. A new *Policing Standards Manual* was issued in February 2000, which contains 58 guidelines and sample board policies developed to support the *Adequacy Standards Regulation*. The Manual includes new guidelines on arrest, prisoner care and control, and criminal investigation management. The guidelines on arrest are in compliance with legal and constitutional requirements. The Ontario Civilian Commission on Police Services has

the mandate to hold hearings and impose remedies with respect to non-compliance on these guidelines.

312. The *Major Case Management Manual* sets out procedures specific to interviewing. The Ministry of the Solicitor General developed a training model and Regulations under the PSA, as well as supporting standards relating to the use of force by police.

Article 10: Education and Training

313. All staff of the Ministry of Community and Social Services are trained in the requirements pertaining to the use of force on clients, as set out in the Ministry's *Young Offender Services Manual*. These requirements cover the following key areas:
- use of physical or mechanical restraints
 - use of secure isolation
 - maintenance of discipline
 - control of contraband
 - use of searches
 - apprehension of youth
 - use of punishment
314. All correctional officers in provincial correctional facilities receive basic and advanced training, including education and information regarding prohibition against mistreatment in correctional settings. In addition, all correctional staff receive education and training in relevant statutes and regulations, security protocols, principles of ethics, the proper use of force and the effective use of non-physical intervention.
315. Under the *Police Services Act* (PSA) and related policies and procedures, municipal police services and the Ontario Provincial Police (OPP) are required to provide adequate training, education and information to police officers on procedures for arrest and detention, custody, interrogation, investigation and the use of force.

Article 11: Treatment of Persons Arrested, Detained or Imprisoned

316. All youth in the Ministry of Community and Social Services young offender facilities come under the jurisdiction of the *Child and Family Services Act* which sets out rights and protections for children, including:
- the right to speak in private and receive visits from his/her solicitor or another person representing the child
 - controls on the use of secure isolation

- regular advice to children regarding their rights
317. Compliance review mechanisms ensure that standards set out in the *Young Offender Services Manual* regarding rights, complaint procedures, serious occurrence reports, child abuse, use of punishment, searches, mechanical restraints and mandatory criminal reference checks for staff, are adhered to.
318. Both the Ministry of Correctional Services and the Ministry of the Solicitor General periodically review the statutes, policies and procedures related to the prohibition against abuse of persons during arrest, interrogation, investigation, interview, detention and custody.

Article 12: Prompt and Impartial Investigation, and Article 13: Allegations of Torture

319. The serious occurrence procedures of the Ministry of Community and Social Services require that all serious occurrences involving children and vulnerable adults must be reported by the licensee/service provider to the Ministry within 24 hours, including serious injuries and allegations of abuse.
320. The Ministry of Correctional Services' Independent Investigations Unit ensures that persons involved in the provincial correctional system have a means to complain about abuse by Ministry employees, and to ensure a prompt and impartial investigation into complaints.
321. Persons involved in the provincial correctional system may complain about abuse to the Office of the Ombudsman, the Information and Privacy Commissioner, the Ontario Human Rights Commission, or the Correctional Investigator of Canada. In provincial correctional facilities, all correspondence to or from these agencies is not opened or examined for contraband or inappropriate content. Investigations by these agencies are independent and are afforded the full cooperation of the Ministry of Correctional Services.
322. The PSA establishes a public complaints system in which any member of the public who is directly affected by the conduct of a police officer, or by the policies or services provided by a police service, may make a complaint. A complaint may be made either directly to the police service named in the complaint or to the Ontario Civilian Commission on Police Services, an independent, civilian, quasi-judicial agency that has the authority to investigate complaints, to hold and adjudicate hearings, as well as to impose remedies.

Article 16: Prevention of Other Acts of Cruel, Inhuman or Degrading Treatment or Punishment

323. Under Ontario's *Child and Family Services Act*, every licensee is required to maintain an up-to-date written statement of policies and procedures setting out methods of maintaining discipline and procedures governing punishment and isolation methods that may be used in the residence. No licensee is permitted to use deliberate harsh or degrading measures to humiliate a resident or undermine a resident's self-respect.
324. The Government of Ontario recently passed new legislation intended to enhance safety, security and respect in schools. Three new initiatives have been developed as a result of this new legislation:
- Criminal reference checks for everyone teaching or working in schools with regular access to students. The Ministry of Education has also requested that school boards review their hiring practices and procedures for identifying and reporting cases of alleged or suspected sexual misconduct.
 - Strict discipline schooling programs for students who have been expelled from school for serious incidents, such as bringing a firearm to school. Strict discipline schooling programs, or their equivalents, for expelled students will provide a structured approach to help students turn their lives around so that they can return to and succeed in the regular school program.
 - The new legislation gives the Minister of Education authority to set parameters regarding in-school suspensions and/or other forms of discipline, and provides direction as to the mitigating circumstances to consider when determining the consequences for students who do not abide by the rules of the school. Mitigating circumstances, as well as the ability for schools to adopt a progressive discipline scheme for less serious incidents, better ensures that mandatory consequences (e.g., suspensions or expulsions) do not have a disproportionately harsh impact on, for example, exceptional pupils.
325. In order to prevent acts of cruel, inhuman or degrading treatment or punishment in provincial correctional facilities, the Ministry of Correctional Services monitors compliance with relevant statutes, regulations, policies and procedures, and training and standards regarding the proper use of force and the effective use of non-physical intervention and communications.

Manitoba

Introduction

326. This report updates the information contained in the *Third Report of Canada on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* with respect to developments in Manitoba between April 1996 and April 2000.

Article 2: Legislative, Administrative, Judicial or Other Measures

327. Manitoba's *Corrections Act* and its Regulation were repealed upon the proclamation of the *Correctional Services Act* on October 1, 1999. The Correctional Services Regulation 128/99 also came into force on this same date. The comprehensive review and redrafting of this new legislation now more completely addresses rights and responsibilities within a progressive and contemporary context that includes the *Canadian Charter of Rights and Freedoms* and other legislative factors. The new Act and the expanded regulatory authority are now applicable to all custodial or community corrections (both youth and adult).
328. The Act now contains "Purpose" statements as well as a section on General Principles. One of the stated purposes is "the safe, secure and humane accommodation of persons who are in lawful custody," and another is "appropriate programs, services and encouragement to assist offenders to lead law-abiding and useful lives." The Regulation has a section on "principles and procedures of supervision and discipline" relative to youth custodial facilities. Alternative resolutions are sought in handling disciplinary offences in adult custodial facilities.
329. Correctional policy has also undergone redrafting to reference the authority contained in this new Act and Regulation. The Regulation itself is required to have a consultative review by the Minister for any amendment or repeal, within five years of its coming into force.
330. In addition to extensive training of new recruits, mandatory refresher courses are required by policy for all correctional staff to maintain their competency, particularly with respect to dealing with emergencies, including "non-violent crisis prevention."

Article 10: Education and Training

- 331. Within corrections, training has developed progressively over the past number of years in Manitoba with dedicated management, qualified staff trainers and updated curriculum that provides initial training of core competencies for new staff. Refresher training in critical skill areas is also scheduled.
- 332. Responses to major disturbances in custodial facilities previously responded to by police services are now safely and professionally dealt with by staff specifically trained as an emergency response unit. In addition, individual facilities have trained response teams for specific conflict resolutions, when required.
- 333. Facility staff members in Manitoba work cooperatively with police services on the control of gang problems involving street gang members organizing gang-related activity while incarcerated. Preventive security within facilities initiate liaison with the provincial gang intervention strategy to exchange information to effectively manage gang-related issues that have surfaced over the past number of years.
- 334. A comprehensive policy on the use of restraint equipment and pepper spray has been approved, consistent with necessary training and accountability measures.
- 335. In the mental health field, a new *Mental Health Act* (proclaimed on October 29, 1999) has increased the rights of involuntary patients to access or refuse treatment. It has also developed a system for seeking consent for treatment in situations where a patient lacks the capacity to provide such consent. The legislation has also increased the responsibilities of physicians who seek to confine patients in psychiatric facilities.
- 336. The policies of psychiatric facilities are reviewed on an ongoing basis in Manitoba (every three years). For example, a restraint/seclusion literature review is currently being done by the Selkirk Mental Health Centre to assess how these procedures co-relate with the core values of care, hope and empowerment of such centres.

Article 11: Treatment of Persons Arrested, Detained or Imprisoned

- 337. The *Mental Health Act* also enables the Minister to establish standards committees for mental health facilities, and enables the Director of Psychiatric Services to require reports from the Medical Director of a facility with respect to the detention, care and treatment of persons in that facility.

Article 12: Prompt and Impartial Investigation

338. The area of “investigations” has been more clearly addressed in the new *Correctional Services Act*. The Act also prohibits the obstruction of an investigation, inquiry, review or inspection. A current initiative involves the development of a policy on handling investigations within corrections. A draft policy, including consultation from Labour Management and Human Resources, is under review.
339. In May 2001, the Government of Manitoba also enacted the *Protection of Persons in Care Act*, which provides a mechanism for impartial investigation for the aging population in personal care homes and hospitals.

Article 13: Allegations of Torture

340. One of the principles articulated in the new corrections legislation states that “Offenders, and the guardians of offenders who are young persons, should be involved in decisions made in the administration of this Act that affect the offender whenever appropriate.” The “Complaints and Appeals” part of the Regulation also consolidates the process required in the Act for dealing with the outcome of prescribed decisions or complaints about “any condition or situation in the facility that affects the inmate.”
341. Under the Corrections Regulation, offenders are granted access to telephone communications and advised that such communications may be subject to interception. The Regulation also lists the persons or offices that are privileged, in which case correspondence will not be inspected or read. This includes government ministers, the Human Rights Commission, the Ombudsman, lawyers representing the offender, and senior correctional officials or others carrying out a legal responsibility.

Article 14: Redress and Compensation

342. The latest legislation on victims is Manitoba's *Victims' Bill of Rights*, which was passed on June 29, 1998, and proclaimed into force on August 31, 2001, in conjunction with the Designated Offences Regulation. It replaced the *Victims' Rights Act* that had been given Royal Assent a year earlier, which in turn had repealed the *Criminal Injuries Compensation Act* and the *Justice for Victims of Crime Act*. This new legislation is being implemented in phases, with the second phase being introduced January 31, 2002, and listing additional offences on which victims are entitled to services. The plan is to eventually designate all the offences, but in a manner that follows the completion of the support system capacity to serve the victims' needs.

343. "The Victims' Assistance Fund" and the "Compensation for Victims of Crime" that were part of the *Victims' Rights Act* have been continued in the consolidation of this new Act, but are subject to amendment.

Article 16: Prevention of Other Acts of Cruel, Inhuman or Degrading Treatment or Punishment

344. Canada's Second Report made reference to the replacement of the former Lieutenant Governor's Advisory Board of Review with the Review Board of Manitoba (*Criminal Code*). (Other provinces have similar bodies.) These review boards have come under continuous court supervision for compliance with the *Canadian Charter of Rights and Freedoms*. Currently, unproclaimed amendments to the governing legislation are under review, and presentations will be made to a federal parliamentary committee on the subject.
345. The province's *Mental Health Act* has strengthened the offence and penalty provisions for mistreatment of mentally disordered persons inside or outside psychiatric facilities.
346. The *Vulnerable Persons Living With a Mental Disability Act* was proclaimed on October 4, 1996. Originally, it had been assented to in 1993 when Part II of the former *Mental Health Act* had been repealed. It sets out a new regime for addressing the needs of persons who had previously been classified as "mentally retarded." Among other things, the legislation provides a variety of protections for vulnerable persons, and creates the Office of Vulnerable Persons' Commissioner.

Documentation

347. The following documents are filed with the Committee, along with the present report:
- The *Correctional Services Act*
 - The *Correctional Services Regulations* 128/99
 - The *Mental Health Act*
 - The *Protection of Persons in Care Act*
 - The *Victims' Bill of Rights*
 - The *Vulnerable Persons Living with a Mental Disability Act*

Saskatchewan

Introduction

348. This report updates the information contained in the *Third Report of Canada on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* with respect to developments in Saskatchewan between April 1996 and April 2000.

Additional Information Required by the Committee

349. When the Committee against Torture reviewed Canada's Third Report, the Committee asked questions related to certain incidents involving Aboriginal people and the Saskatoon City Police. Saskatchewan's submission to this report will deal with that issue.
350. In February 2000, Darrel Night, an Aboriginal man, alleged that two Saskatoon City Police officers picked him up, drove him outside the city and dropped him off in sub-zero weather to walk back to Saskatoon. The frozen bodies of two Aboriginal men had been found earlier in the winter near the Queen Elizabeth Power Station. It was alleged that these individuals may also have been the victims of police drop-offs.
351. Since that time, an extensive investigation of these two deaths, plus three others (Darcy Dean Ironchild, Lloyd Dustyhorn, Rodney Naistus, Lawrence Wegner and Neil Stonechild), as well as other allegations of police mistreatment, has been under way.
352. The investigation of the Darrel Night incident resulted in the charging of two Saskatoon City Police officers who were convicted of unlawful confinement in October 2001. Each was sentenced to eight months' imprisonment. Those sentences are currently under appeal.
353. Investigations into the deaths of Darcy Dean Ironchild, Lloyd Dustyhorn, Rodney Naistus, and Lawrence Wegner have concluded. A review of the investigations by the Public Prosecutions Division of Saskatchewan Justice determined that criminal charges were not warranted. The Minister of Justice ordered coroner's inquests into these four deaths. In Saskatchewan, such inquests are open to the public, and evidence is given before a six-person jury, which is summoned at random. In addition to establishing when and where the death occurred, and the medical cause of death, the coroner's jury may make recommendations to prevent similar deaths in the future.

354. The inquest into the death of Darcy Dean Ironchild took place December 12-14, 2000, in Saskatoon. The 33-year-old died in the early morning hours of February 19, 2000. He had been taken into custody by Saskatoon City Police for public intoxication early in the evening of February 18, 2000. Mr. Ironchild was kept under observation in cells until around midnight, when he was released and sent home in a taxi. The jury concluded that Mr. Ironchild's death was accidental, and that the cause of death was an overdose of chloral hydrate. The jury made a number of recommendations with respect to the prevention of "double-doctoring" for the purpose of obtaining multiple prescriptions for drugs. The jury also recommended a review of police policies on their contact with and care of intoxicated persons, and that federal, provincial and local governments should fund a multicultural detoxification centre where an intoxicated person could be taken rather than remaining in police custody.
355. The inquest into the death of Lloyd Joseph Dustyhorn took place May 8-10, 2001, in Saskatoon. The 53-year-old died in the early morning hours of January 19, 2000. He had been taken into custody by Saskatoon City Police for public intoxication on the evening of January 18, 2000. Mr. Dustyhorn was kept under observation in cells until early morning of January 19, 2000, when he was released and transported home by Saskatoon City Police. The jury found that Mr. Dustyhorn's death was accidental and caused by hypothermia. This jury also recommended the establishment of an emergency detoxification centre in Saskatoon where non-violent intoxicated persons could be taken rather than remaining in police custody. Improved communications and record keeping regarding detainees were also recommended, as were improvements in the education and training of detention staff in the areas of dealing with intoxicated persons and Aboriginal awareness and sensitivity.
356. The inquest into the death of Rodney Hank Naistus was held October 30-November 2, 2001, in Saskatoon. The body of the 25-year-old man was found in the late morning of January 29, 2000, in the southwest industrial area of Saskatoon. He was last seen alive in the early morning hours of January 29, 2000, in the downtown area. While the jury was able to identify the cause of death as hypothermia, it was unable to determine the circumstances that led to Mr. Naistus' death. The jury's recommendations all related to police policies and police/Aboriginal relations.
357. An inquest into the death of Lawrence Kim Wegner was held in January and February of 2002 in Saskatoon. The body of the 30-year-old man was found February 3, 2000, in a field south of the city of Saskatoon's landfill. He was last seen alive in the early morning hours of January 31, 2000, in the southwest area of the city. As with the Naistus inquest, the jury found the cause of death to be hypothermia, but was unable to determine the circumstances that led to Mr. Wegner's death. The jury provided a number of recommendations related to mental health and addictions services; police procedures with

respect to communications, scene preservation and the interviewing of witnesses; as well general recommendations having to do with cross-cultural awareness training for police and improvement of access to the justice system for Aboriginal people.

358. The body of Neil Stonechild was exhumed in late April 2001. The investigation into Mr. Stonechild's death is continuing.
359. In addition to the criminal investigation, the office of the Saskatchewan Police Complaints Investigator has hired additional staff to look into specific complaints of police actions that are not criminal acts.
360. On November 15, 2001, the Attorney General for Saskatchewan announced the establishment of the Commission on First Nations and Métis Peoples and Justice Reform. This independent Commission will engage in a problem-solving dialogue with the people of Saskatchewan, in particular with Aboriginal communities and organizations, to identify reforms that will improve the justice system for all citizens of the province. The goal of the Commission is to identify efficient, effective and financially responsible reforms to the justice system.

Alberta

Introduction

361. This report updates the information contained in the *Third Report of Canada on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* with respect to developments in Alberta between April 1996 and April 2000.

General Information

362. The role of the provincial Ombudsman, as reported by Alberta in the Canada's Third Report on this Convention, remains unchanged.

Article 2: Legislative, Administrative, Judicial or Other Measures

363. Provisions under Alberta's *Mental Health Act* and the *Public Health Act*, allowing for the detention of involuntary patients for examination and treatment, remain in place.
364. There has been no new case law relevant to the implementation of the Convention.

Article 10: Education and Training

365. Police officers in Alberta continue to receive training that defines the limits of force that can be used by an officer.

Article 11: Treatment of Persons Arrested, Detained or Imprisoned

366. The Correctional Services Division of Alberta Justice has a considerable number of policies that reinforce the need to treat incarcerated offenders equitably. Policies include appeal mechanisms to correctional and third party officials, and reviews of staff decisions by senior correctional staff. Training initiatives are predicated on policy directives. All new and incumbent staff receive complete training on all aspects of policy, including approved security and disciplinary methods, offender management techniques, conflict resolution and protections available to offenders.

Article 12: Prompt and Impartial Investigation

367. The provisions of the *Fatality Inquiries Act*, as reported by Alberta in the Canada's Third Report on this Convention, remain in effect.
368. No complaints have been received by either the Law Enforcement Review Board or the Criminal Injuries Appeal Board regarding the use of torture or other cruel, inhuman or degrading treatment or punishment.
369. The "no physical discipline" policy with respect to the province's foster homes and foster parents, as reported by Alberta in the Canada's Third Report, remains in effect.
370. The *Protection of Persons in Care Act*, passed in 1997, is legislation designed to protect adults in care facilities from abuse. The Act helps Alberta adults, especially those who are vulnerable, live with dignity and respect. The Act protects adults in publicly-funded care facilities such as hospitals, seniors' lodges, group homes and nursing homes.
371. Alberta's *Protection of Persons in Care Act*:
- defines abuse
 - makes it mandatory for people who suspect abuse to report it
 - establishes a toll-free telephone line where people can report abuse
 - protects people who report abuse in good faith from retaliatory action
 - specifies penalties for failing to report suspected abuse and for knowingly making false reports
 - sets out a process for investigating and resolving reports of abuse
 - requires a criminal record check for new employees and volunteers working in care facilities

Article 14: Redress and Compensation

372. Persons who allege that they are victims of municipal police may complain in writing to the Chief of Police and may appeal the disposition of their complaint to the Police Commission or to the Law Enforcement Review Board, an independent quasi-judicial body established under the Alberta *Police Act*.
373. Persons who allege that they are victims of the Royal Canadian Mounted Police (RCMP) may complain in writing to the RCMP Assistant Commissioner "K" Division or the RCMP Public Complaints Commission, which is an independent body created by Parliament to ensure that complaints against the RCMP are examined impartially.

Appeals of the decisions of the Assistant Commissioner may be made to the RCMP Public Complaints Commission.

374. Persons who allege that they are victims of a First Nation Police Service may complain in writing to the Chief of Police and may appeal the disposition of their complaint to the First Nation Review Board, an independent body set up under the Tripartite Policing Agreement.
375. The *Alberta Victims of Crime Act* was proclaimed on November 1, 1997. The Act provides financial benefits for innocent victims injured during the commission of a crime and helps to fund organizations that assist crime victims. Funding for these programs is provided by surcharges collected on fine revenue.
376. Financial benefits are paid to those injured during a crime on a one-time basis in accordance with the severity of the injuries sustained. If an applicant is dissatisfied with the decision of the Director of the Financial Benefits Program, he/she may request a hearing before the Criminal Injuries Appeal Board. This Board is made up of three members appointed by the Government of Alberta.

British Columbia

Introduction

377. This report updates the information contained in the *Third Report of Canada on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* with respect to developments in British Columbia. It covers the reporting period from April 1996 to April 2000.

Article 2: Legislative, Administrative, Judicial or Other Measures

378. As elaborated in Canada's Third Report, the Attorney General of British Columbia (BC) is responsible for the enforcement of provincial statutes and prosecution of criminal offences which occur within the province. No provision of BC law or policy may be invoked as a justification for torture or other inhumane treatment. In fact, torture is a criminal offence under section 269.1(1) of the *Criminal Code* of Canada, which applies to all jurisdictions in Canada and carries a maximum penalty of 14 years' imprisonment. The definition of torture in section 269.1(1) complies with the definition articulated in article 1 of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.
379. Further measures that may serve to prevent torture include the existence of various professional codes of conduct. With respect to the police, both municipal police officers and officers of the Aboriginal police departments are regulated by the *Code of Professional Conduct Regulation*, BC Reg. 205/98. This Code delineates 12 categories of "disciplinary defaults" including, but not limited to, discreditable conduct, neglect of duty, abuse of authority, improper use and care of firearms and conduct constituting an offence. Sanctions range from a verbal or written reprimand to dismissal.
380. In addition, police departments are required to comply with *Provincial Standards for Municipal Police Departments in British Columbia*, Order in Council No. 748. The purpose of the approximately 400 Standards is to identify minimum acceptable standards for police on topics which range from the use of dogs to the storage of firearms. The Police Services Division of the Ministry of the Attorney General periodically audits police departments in the province to ensure that they are complying with these standards. Examples of relevant standards are included in Appendix BC-1. A copy of the *Code of Professional Conduct Regulation* and the *Use of Force Regulation*, BC Reg. 203/98, are filed with the Committee, along with the present report.

381. Standards of conduct for provincial correctional officers are set out in Ministry of Attorney General documents such as *Standards of Conduct for Correction Branch Employees*, *Adult Custody Policy Manual*, *Community Corrections Policy Manual* and *Correctional Centre Rules and Regulations*. The Corrections Branch standard of conduct with respect to use of reasonable force is filed with the Committee, along with the present report.
382. Similar standards of conduct exist for sheriffs who are responsible for court security and for prisoner escort. The provisions of the *Deputy Sheriff's Code of Conduct* which relate to physical restraint, the use of firearms/batons and the use of pepper spray are filed with the Committee, along with the present report.
383. Doctors and nurses working in psychiatric facilities are also bound by their respective professional codes of conduct. Further regulations and rules may be superimposed over these professional standards by the particular psychiatric facility in question. For example, Riverview, one of the largest psychiatric facilities in the Vancouver region, has developed its own set of written policies around staff conduct. Finally, all employees of psychiatric facilities are subject to section 17(2) of the *Mental Health Act*, R.S.B.C. 1996, c. 288, which prohibits the mistreatment of patients. The provision states: "A person employed in a Provincial mental health facility or a private mental hospital, or any other person having charge of a patient, who ill treats, assaults or willfully neglects a patient commits an offence punishable under the *Offence Act*."

Article 3: Expulsion or Extradition

384. As outlined in paragraph 263 of Canada's Third Report, the Legal Services Society of British Columbia provides legal services (legal aid) for immigration-related proceedings which could result in deportation to applicants who meet the income eligibility guidelines. Although the Society does not track the number of refugee claimants who allege torture, such reports are not uncommon. The statistics provided in the table below detail the total number of immigration and refugee legal aid referrals in British Columbia for each fiscal year from 1996 to 2000.

Fiscal Year	Dates	Immigration and Refugee Referrals
1996-1997	April 1, 1996–March 31, 1997	2430
1997-1998	April 1, 1997–March 31, 1998	2690
1998-1999	April 1, 1998–March 31, 1999	3094
1999-2000	April 1, 1999–March 31, 2000	3949

Article 6: Custody and Other Legal Measures, and Article 7: Prosecution of Offences

385. The Corrections Branch of the Ministry of the Attorney General admits into custody only those persons who have appeared before the courts and have been bound by a criminal order issued by law. The decision to prosecute or extradite remains with the office of the provincial crown counsel.
386. If an accused facing a charge of torture is found either not fit to stand trial or not criminally responsible by reason of mental disorder, he or she will be placed in an appropriate psychiatric facility rather than a prison. Once in the psychiatric facility, the individual is under the authority of the provincial Review Board. The Review Board must review the file within three months of the court's disposition and then once a year after that. The Board must release the person if there is no danger to the community. If there is a risk to the community, the Review Board can either keep the individual in the psychiatric facility or order a conditional release.

Article 10: Education and Training

387. Medical education and training in British Columbia are carried out in two principal ways. First, medical students follow the medical curriculum at the University of British Columbia. Practising physicians keep their skills current by participating in Continuing Medical Education (CME) courses.
388. The medical program offered to medical students covers a broad range of topics. As such, it does not specifically focus on the treatment of victims of torture.
389. With respect to ongoing doctor training, management at CME indicate that training doctors to be able to deal with victims of torture is an area of key concern to the organization. However, as CME courses are self-funded, meaning that program costs must be recouped from course fees, demand drives course development.
390. The provisions for police and correctional officer training remain in effect as outlined in paragraphs 266 and 267 of Canada's Third Report.

Article 11: Treatment of Persons Arrested, Detained or Imprisoned

Interrogation

391. The *Canadian Charter of Rights and Freedoms* applies to the actions of all government officials including the police, sheriffs and correctional officers. When a person is detained

or arrested, police must inform that person of his or her right to retain and instruct counsel without delay. In a practical sense, this translates into providing access to a telephone and a telephone directory, as well as information about legal aid.

392. Further protection is offered in section 7 of the Charter. This provision encompasses the right against self-incrimination, as well as guaranteeing the right to life and security of the person. Thus, police cannot obtain confessions through violence or torture.
393. Government and police departments have developed other specialized rules concerning the interviewing of young people. In order to comply with the *Young Offenders (British Columbia) Act*, R.S.B.C. 1996, c. 494, Police Standard D11.2.3 requires that each police department develop a written policy governing the procedures for interviewing young persons, including provision for consulting with legal counsel, parents, guardians, relatives or other appropriate adults.

Custody

394. In British Columbia, custody of prisoners and inmates is the responsibility of the Attorney General. Within the Court Services Branch, Sheriffs' Services provides in-court custody and prisoner escort. The Corrections Branch provides care, custody and control of remanded and sentenced inmates and, in some cases, immigration-related detainees.
395. Strict guidelines govern the use of force against persons in the custody of the state. For example, correctional officers may use force in their capacity as peace officers pursuant to the *Criminal Code* of Canada as well as to the *BC Correctional Centre Rules and Regulations* and *Standards of Conduct for Corrections Branch Employees*. Reasonable force may be used only to: prevent the commission or continuation of an offence; maintain or restore order; apprehend an offender; prevent an offender from an act of self-harm; or assist another officer in any of the above conditions. Corrections Branch policies further define the situations and circumstances in which force may be applied. The guiding principle is that the force used must not exceed that which is necessary to effect control, and that it must be discontinued at the earliest reasonable opportunity.
396. Persons who have been found unfit to stand trial for a criminal offence, or not criminally responsible by reason of mental disorder, will be placed in appropriate psychiatric facilities. The director of the psychiatric unit or facility is responsible for the patients in the facility.

Article 12: Prompt and Impartial Investigation, and Article 13: Allegations of Torture

397. The Office of the Police Complaint Commissioner was created on July 1, 1998, replacing the BC Police Commission as the body to investigate complaints lodged against municipal police in British Columbia. The complaint procedure created for this purpose under the *Police Act*, R.S.B.C. 1996, c. 367, provides for the appointment of an independent Complaint Commissioner who is responsible for overseeing the handling of complaints against municipal police officers. The Commissioner acts in the public interest to ensure that complaints are handled in a manner specified by the Act. Specifically regarding complaints, the Complaint Commissioner is responsible for the receiving and recording of complaints, and advising and assisting complainants, as well as the officers complained against, chiefs of police and police boards.
398. The first step taken in every formal complaint against the municipal police is an internal investigation conducted by the chief constable of the police department in question. If the Complaint Commissioner is not satisfied with the internal investigation, he/she may order a public hearing or recommend that the complaint proceed to a hearing. Retired judges generally conduct these hearings.
399. The Office of the Police Complaint Commissioner keeps statistics as to the numbers and kinds of complaints received and prepares quarterly statistical reports. The first quarterly report of 2000 is filed with the Committee, along with the present report, as an example of the work undertaken by the Commissioner. For the purposes of analyzing the quarterly report, it should be noted that a "public trust complaint" includes complaints where physical or emotional harm has been alleged.
400. Complaints involving members of Aboriginal police departments are not governed by the Office of the Police Complaint Commissioner, but rather the *Special Provincial Constable Complaint Procedure Regulation*, BC Reg. 206/98. A copy of this Regulation is submitted with the present report. Precise statistics as to the number of complaints lodged against members of Aboriginal police departments are unavailable.
401. Inmates held in provincial correctional centres also have rights of complaint established under the *Correctional Centre Rules and Regulations*. Section 40 establishes the process for inmates to file written complaints to an officer, centre Director, District Director or Regional Director. The person receiving the complaint must investigate the complaint and respond back to the inmate within seven days. Section 41 establishes a process whereby inmates may make a written complaint or grievance to the Director of Investigation, Inspection and Standards Office (II&SO).

402. In certain circumstances, such as when a handgun has been discharged to protect life or to prevent grievous bodily harm, II&SO may also be called upon to investigate incidents involving sheriffs. Ministry of the Attorney General Sheriff Services indicate that a "Critical Incident Review Policy" is currently under development.
403. A final complaint mechanism is the Ombudsman, which is established as an independent body reporting to the province's Legislature. Section 10 of the *Ombudsman Act*, R.S.B.C. 1996, c. 340, states that the Ombudsman acting on a complaint or on his/her own initiative may investigate a decision or recommendation made, an act done or omitted, or a procedure used by an authority that aggrieves or may aggrieve a person. Authorities that may be the subject of such an investigation include government ministries, municipalities, regional districts and hospitals. The *Ombudsman Act* is filed with the Committee, along with the present report.

Article 14: Redress and Compensation

404. There are two principal statutes which are designed to assist those who have been victims of crime: the *Victims of Crime Act*, R.S.B.C. 1996, c. 478, and the *Criminal Injury Compensation Act*, R.S.B.C. 1996, c. 85. While these Acts are not specifically aimed at victims of torture, they provide services and support to all victims of crime, including those who have experienced severe physical or sexual assault, and other forms of cruel and degrading treatment.

405. The following are the goals of the *Victims of Crime Act*, enacted on July 1, 1996:

To the extent that it is practicable, the government must promote the following goals:

- (a) to develop victim services and promote equal access to victim services at all locations throughout British Columbia
- (b) to have victims adequately protected against intimidation and retaliation
- (c) to have property of victims obtained by offenders in the course of offences returned promptly to the victims by the police if the retention is not needed for investigation or prosecution purposes
- (d) to have justice system personnel trained to respond appropriately to victims
- (e) to give proper recognition to the need of victims for timely investigation and prosecution of offences

- (f) to have facilities in courthouses that accommodate victims awaiting courtroom appearance separate from the accused and witnesses for the accused
- (g) to afford victims throughout British Columbia equal access to
 - (i) courtrooms and prosecutors' offices that are designed to be used by persons with physical disabilities
 - (ii) interpreters for speakers of any language
 - (iii) culturally sensitive services for Aboriginal persons and members of ethnocultural minorities

406. The second victim-oriented Act, the *Criminal Injury Compensation Act*, is designed to compensate people who have been injured or killed in BC as a result of certain criminal offences. Notably, victims of torture (s. 269.1 of the *Criminal Code*) may seek compensation under the Act. Compensation may involve a financial award as well as medical aid including provision of artificial limbs, eyeglasses and hearing aids. Counselling may also be provided.
407. In addition to the *Victims of Crime Act* and the *Criminal Injury Compensation Act*, under the *Crown Proceeding Act*, R.S.B.C. 1996, c. 89, the provincial government is liable for torts committed by its agents and officers. Thus, if a British Columbian suffers cruel or degrading treatment at the hands of a government employee (including, for example, a municipal police officer), then that person could launch a civil action against both the individual officer and the province.

Article 16: Prevention of Other Acts of Cruel, Inhuman or Degrading Treatment or Punishment

408. The British Columbia *Human Rights Code*, R.S.B.C. 1996, c. 210, prohibits discrimination in employment, housing, public services, publications on the grounds of race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex or sexual orientation. Acts of cruel, inhuman or degrading treatment or punishment that do not amount to torture could be encompassed by the prohibitions contained in the Code. For example, human right complaints involving harassment in the workplace may involve cruel, inhuman or degrading treatment. Jurisprudence has made it clear that intent to discriminate is not required for conduct to contravene the Code.
409. The British Columbia Human Rights Commission, an independent body, administers the *Human Rights Code*. Any person may file a complaint alleging discrimination contrary to the Code. If the complaint falls within the jurisdiction of the Code, it will be referred to a Human Rights Officer for investigation. If the investigation reveals evidence of

discrimination and the mediation has proved unsuccessful, the investigator will forward his or her report to the Commissioner of Investigation and Mediation. The Commissioner can either dismiss the complaint or refer it to the British Columbia Human Rights Tribunal for hearing.

410. If a Tribunal member determines that discrimination has occurred, there are various remedies that may be applied. First, the member must order the person to cease the contravention of the Code and refrain from committing the same or a similar contravention. Other possible remedies include: a declaratory order that the conduct complained of is discrimination contrary to the Code; an order that the respondent take steps to ameliorate the discriminatory practice or adopt and implement an employment equity program; or an order for compensation for lost wages or expenses incurred by the contravention. Finally, damages to compensate for injury to dignity, feelings and self-respect may also be awarded.
411. The British Columbia Human Rights Commission (and its predecessor the British Columbia Human Rights Council) plays an important public education role. Each year educational programs are offered to children and adults, schools and businesses. For example, in the 1998-99 fiscal year, the Commission's Education and Communication program initiated a 50th Anniversary Steering Committee made up of representatives from both provincial and federal government agencies in order to coordinate a variety of educational programs to recognize the 50th anniversary of the Universal Declaration of Human Rights.

Documentation

412. The following documents are filed with the Committee, along with the present report:
- *Code of Professional Conduct Regulation*, BC Reg. 205/98
 - *Use of Force Regulation*, BC Reg. 203/98
 - *Corrections Branch Standards: Use of Reasonable Force*
 - *Deputy Sheriff's Code of Conduct*
 - *Office of the Police Complaint Commissioner — Statistical Report: January 1 to March 31, 2000*
 - *Special Provincial Constable Complaint Procedure Regulation*
 - *Ombudsman Act*, R.S.B.C. 1996, c. 340

Appendix BC-1

Additional Materials Relevant to Article 2: Provincial Policing Standards

Provincial Standards for Municipal Police Departments in British Columbia, the first of their kind in Canada, were developed in 1992 as a joint project of the Police Commission and the British Columbia Association of Chiefs of Police by police officers seconded to the Commission. The Standards identify over 400 areas in which a police department should have policies, and audits are based on those Standards. The Standards aim to identify minimum acceptable standards for police that are uniformly applicable in all municipal departments.

The Standards addressing areas relevant to the UN Convention include the following:

(a) *Internal Investigations*

- Management Standard D6.1.1 requires the establishment of administrative policies for the purposes of creating a process to ensure that the integrity of departmental impartiality, fairness and objectivity is maintained when investigating members of the department.
- Management Standard D6.1.2 requires the establishment of written policy that specifies the activities of the internal investigation function, including recording, registering and controlling the investigation of complaints against officers; supervising and controlling the investigation of alleged or suspected misconduct within the department; maintaining the confidentiality of internal investigation and records; and acting as a resource for line supervisors.
- Operations Standard D6.2.1 details that a written policy requires the department to investigate all written complaints against the department or its employees in accordance with the *Police Act*.
- Operations Standard D6.2.3 notes that it is policy that the department maintain liaison with crown counsel in investigations involving alleged criminal conduct on the part of an employee.

(b) *Prisoner Transportation*

- Operations Standards D14.2.7 and D14.2.8 require the establishment of written policies describing methods to be used in transporting mentally disturbed, handicapped, sick or injured prisoners including how and when prisoners are to be restrained.

(c) *Detention Facilities*

- Standard E1.2.1 requires that detention facilities provide the following minimum conditions for prisoners: sufficient lighting; circulation of air in accordance with local public health standards; and a bed and bedding for each prisoner held in excess of eight hours.
- Standard E1.4.1 requires the establishment of a written policy to govern the securing of firearms in the holding facility.
- Standard E1.4.4 requires a security alarm system linked to a designated control point to ensure the safety of prisoners and staff.
- Standard E1.4.5 requires that a video surveillance and recording system be used in all prisoner booking areas to protect officers from unfounded allegations or, alternatively, to provide evidence if an investigation is launched.
- Standard E1.4.8 establishes specific booking-in procedures, including the recording of medications taken by the prisoner as well as his or her physical and psychological condition.
- Standards E.1.4.9 and E.1.4.10 require that young persons be detained separately from adult prisoners and that female prisoners be detained separately from male prisoners.
- Standard E1.4.11 calls for the establishment of a written policy describing methods for handling, detaining and segregating persons under the influence of alcohol or other drugs or who are violent or self-destructive.
- Standard E1.4.14 establishes that a journal be maintained in which significant or unusual occurrences are recorded, in addition to all other detention facility inspections required by these standards.
- Standard E1.5.1 requires a written policy identifying the policies and procedures to be followed when a prisoner is in need of medical assistance.
- Standards E6.1.2 and E6.1.3 require the development of a written policy to ensure that: a prisoner's opportunity for lawful release from custody is not impeded; every effort is made to provide privacy in contacts between counsel and prisoners; and every prisoner has access to a telephone, telephone directory and legal aid assistance.

(d) *Use of Dogs*

- Management Standard D2.1.5 requires the establishment of a written policy that specifies the criteria for the deployment of dogs.

PART IV

Measures Adopted by the Governments of the Territories

Nunavut

Introduction

413. This report outlines the activities of the territory of Nunavut relevant to the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* between April 1999 and April 2000.

General Information

414. On April 1, 1999, the new territory of Nunavut was created out of the Northwest Territories pursuant to section 3 of the *Nunavut Act*, S.C. 1993, c. 28. Modeled on the *Northwest Territories Act* and the *Yukon Act*, the *Nunavut Act* bestows on the Government of Nunavut powers equivalent to those possessed by the other two territories. Under section 29 of the *Nunavut Act*, all territorial laws in force in the Northwest Territories immediately before the division were duplicated in Nunavut on April 1, 1999. All other laws in force in the Northwest Territories at that time (e.g., federal laws, common law) were continued in Nunavut, to the extent that they could apply to the new territory.

Article 2: Legislative, Administrative, Judicial or Other Measures

415. The law and policy of Nunavut in relation to the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* has not been modified in Nunavut during this reporting period and therefore remains as outlined in relation to the Northwest Territories in the First, Second and Third Reports of Canada.

Documentation

416. The *Nunavut Act*, S.C. 1993, c. 28, is filed with the Committee, along with the present report.

Northwest Territories

Introduction

417. This report updates the information contained in the *Third Report of Canada on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* with respect to developments in Northwest Territories between April 1996 and April 2000.

Article 2: Legislative, Administrative, Judicial or Other Measures

418. There have been no changes to the legislation or policies of the Government of the Northwest Territories during the reporting period. Legislative measures outlined in Canada's Third Report remain in effect.

Article 10: Education and Training

419. No programs on the effects of torture were provided to medical personnel during this reporting period.

Article 16: Prevention of Other Acts of Cruel, Inhuman or Degrading Treatment or Punishment

420. No relevant changes have been made to the *Mental Health Act* since the release of Canada's Third Report.

Yukon

Introduction

421. This report updates the information contained in the *Third Report of Canada on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* with respect to developments in Yukon between April 1996 and April 2000.

Article 2: Legislative, Administrative, Judicial or Other Measures

422. The Yukon's *Torture Prohibition Act*, S.Y. 1988, c. 26, as previously reported, provides the primary means of civil redress against government officials for victims of torture. No amendments have been made to this Act and no cases were brought under this Act for the period of this report.
423. The *Corners Act*, S.Y. 1986, c. 35, provides for an investigation and subsequent inquiry of a death where there is reason to believe the death resulted from violence, misadventure or unfair means or a result of negligence, misconduct or malpractice.
424. The *Ombudsman Act*, S.Y. 1995, c. 17, allows an independent Ombudsman to investigate, at no cost to the complainant, how Yukon government departments, agencies, commissions and boards do business, their actions, decisions, practices and procedures.

Article 12: Prompt and Impartial Investigation, Article 13: Allegations of Torture, and Article 14: Redress and Compensation

425. The *Ombudsman Act* ensures prompt and independent investigation into complaints against public officials. For the time period of this report, no complaints had been made to the Ombudsman regarding the use of torture and other cruel, inhumane or degrading treatment or punishment.
426. During the reporting period, there were 50 reported complaints to the Public Complaints Commission against Royal Canadian Mounted Police (RCMP) in Yukon. Of these, 33 were determined to be unfounded, and seven were investigated and then closed. At the end of the time period, 10 complaints were still active.

427. There were no complaints made by correctional inmates with regard to corrections officers charged with the custody of offenders in Yukon under the *Corrections Act*, S.Y. 1986, c. 26, during the period covered by this report.
428. There were no complaints pursuant to the *Torture Prohibition Act*, during the period covered by this report.



Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Fifth Report of Canada

Covering the period
May 2000 – July 2004

FOREWORD

The *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* was adopted by the United General Assembly on December 10, 1984. Canada ratified the Convention on June 24, 1987.

States Parties are required to report to the United Nations on measures they have taken to give effect to the Convention. The present report was submitted to the Committee against Torture in October 2004 and covers the period of May 2000 to July 2004. It was prepared in close collaboration by the federal, provincial and territorial governments and describes measures and initiatives taken by these governments with respect to the Convention.

The report is published so that it can be made available to interested groups and individuals. Through its publication, it is hoped that Canadians will be encouraged to become familiar with the measures adopted in Canada to ensure the implementation of the Convention and to broaden their understanding of the obligations contracted by Canada through ratification of this important international treaty.

Copies of the report, in both official languages, may be obtained free of charge from the Human Rights Program, Department of Canadian Heritage. This report is also available on the Human Rights Program website at: <http://www.pch.gc.ca/progs/pdp-hrp/>.

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* In geographical order, from east to west

Introduction

1. On June 24, 1987, Canada ratified the *United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (the *Convention*). This is Canada's Fifth Report under the Convention, covering the period from May 2000 to July 2004. Part I updates from the Fourth Report the measures undertaken at the federal level to give effect to the provisions of the *Convention*. Parts II and III include an update on measures undertaken at the provincial and territorial levels.
2. This report reflects the principal changes in federal, provincial and territorial policies, laws and programs since the submission of Canada's Fourth Report under the Convention. Unless necessary, the information contained in Canada's previous reports is not repeated here and only significant changes are mentioned. For a complete picture of measures to implement the Convention, the previous reports should be consulted as well as reports submitted under other treaties, in particular the *International Covenant on Civil and Political Rights*.

Consultations with Non-Governmental Organizations

3. The government of Canada invited 47 non-governmental organizations (NGOs) to give their views on the issues to be covered in the federal portion of this report. One response was received from the Canadian Centre for Victims of Torture (CCVT), which has been forwarded to the Committee.
4. Although the CCVT has acknowledged Canada's leadership role at the forefront of the global campaign against impunity for torturers and other perpetrators of international crimes, it has expressed some concerns with respect to Canada's compliance with the Convention. These include:
 - the adversarial nature of some refugee determination hearings;
 - the increasing number of immigration detainees in Canada;
 - the issue of police violence;
 - the Supreme Court of Canada ruling in *Suresh* where the Court stated that Canada's interest be weighed with the Convention refugee's interest;
 - the need for public education about the rights of torture survivors to redress and compensation;
 - the need for Canada to define cruel, inhumane and degrading treatment or punishment and to develop mechanisms for the accountability and prosecution of officers who commit such offences.

Part I

Measures Adopted by the Government of Canada

Article 2: Legislative, administrative, judicial and other measures

5. Previous periodic reports outlined a series of constitutional and legislative measures directed at preventing torture. There is no new legislation to report.
6. Since the Committee against Torture has indicated an interest in anti-terrorism legislation, the following is a description of Canada's anti-terrorism legislation, including safeguards it contains to protect human rights.
7. Following the terrorist attacks against the United States of 11 September 2001, Canada undertook a comprehensive review of criminal, security and other relevant legislation with a view to addressing the new threat. The review resulted in the *Anti-terrorism Act*, which was given Royal Assent on 18 December 2001. Most of the provisions came into force on December 24, 2001, and with the last proclamation on 6 January 2003, it is now fully in force. The preamble to the *Anti-terrorism Act* recognizes that terrorism is a matter of national concern but this concern must be addressed while continuing to respect and promote the values reflected in, and the rights and freedoms guaranteed by, the *Canadian Charter of Rights and Freedoms* (the *Charter*).
8. The Act addresses a number of specific areas and implements Canada's international obligations under Security Council resolution 1373 of 28 September 2001. Specific amendments include a definition of "terrorist activity",² new criminal offences and sentences, changes to evidence laws, and powers and procedures for dealing with the financing of terrorism.
9. The amendments contain new provisions respecting the arrest and detention of persons to prevent terrorist activities, based on existing criminal law powers. Those suspected of involvement in criminal offences are subject to the normal process of investigation and prosecution. As a preventive measure, however, any peace officer who believes on reasonable grounds that a terrorist activity will be carried out may obtain a judicial arrest warrant and those suspected of involvement and identified may be arrested and detained, if there are grounds to suspect that the arrest is necessary to prevent the terrorist activity. Where there are exigent circumstances, suspects may be arrested without a warrant. Anyone arrested must be taken before a judge within 24 hours if a judge is available and otherwise as soon as possible. Once before the judge, the suspect can be directed to comply with a court order to keep the peace and meet any specific requirements imposed. If the suspect agrees to the order, he or she must be released, subject to re-arrest and prosecution if the order is not complied with. If the suspect refuses to agree, he or she may be detained for up to 12 months. At the end of this period, the suspect must be released, subject to the possibility of the State bringing a further recognizance application. In all proceedings, once the suspect has been arrested, the burden of establishing the existence of the circumstances needed to obtain a recognizance order lies with the State.

¹ All federal legislation can be found at: <http://laws.justice.gc.ca/en/a-11.7/2092.html> /
<http://laws.justice.gc.ca/en/C-46/41632.html>.

² Definition of "terrorist activity" at section 83.01 (1) <http://laws.justice.gc.ca/en/C-46/41632.html>.

10. The legislation also contains powers to conduct judicial investigative hearings (s. 83.28 of the *Criminal Code*), at which attendance by anyone specified by the judge to have direct and material information related to a terrorism offence is mandatory, and those ordered to attend, may be arrested and detained for failure to attend or if there is reason to believe they might be about to flee. The compatibility of these provisions with the *Canadian Charter of Rights and Freedoms* has been examined by the Supreme Court of Canada. On June 23rd 2004, in *Application under s. 83.28 of the Criminal Code (Re)*, the majority of the Court stated that the challenge for democracies in the battle against terrorism is to balance an effective response with fundamental democratic values that respect the importance of human life, liberty and the rule of law.³ The Court concluded that, subject to interpretive comments, the impugned provisions (s. 83.28 of the *Criminal Code*) meet that challenge.
11. In that same judgment, the Supreme Court of Canada reiterated what it had expressed in previous cases (*Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 3; *United States v. Burns*, [2001] 1 S.C.R. 283) concerning the seriousness with which it views deportation or extradition to countries where torture and/or death are distinct possibilities. In that context, the Supreme Court also held that evidence collected at an investigative hearing should be subject to an order preventing its subsequent direct or derivative use in extradition or deportation proceedings where the potential for such use by the state exists.
12. The *Anti-Terrorism Act* contains rigorous safeguards to uphold the rights and freedoms of those affected by it. These safeguards include, with respect to preventive arrest and investigative hearings, requiring prior consent of the Attorney General where the proceedings take place; a judicial authorization; and requiring the Attorney General and Solicitor General of Canada, provincial Attorneys General and Ministers responsible for policing to report annually to Parliament on the use of the preventive arrest and investigative hearing provisions in the new Act. In addition, the Parliament has directed that a comprehensive review of the legislation be conducted within 3 years of its adoption, and a review commencing in late 2004 is expected. It also imposed a “sunset” requirement under which the specific powers relating to preventive detention and investigative powers cease to apply unless extended by a legislative resolution.
13. Nothing in any of the new offences, investigative powers or other provisions affects any of the safeguards already in place against torture and related activities. *Criminal Code* subsection 269.1(4), which bars the use of any statement obtained by torture for any purpose except as evidence that it was in fact obtained by torture, applies in full to all of the new procedures.
14. In addition, the Royal Canadian Mounted Police (RCMP) has developed internal policies that add additional safeguards with respect to the use of these provisions. Among other requirements, the policy requires that the RCMP Deputy Commissioner of Operations

³ The full text of all the judgments rendered by the Supreme Court of Canada can be found at the following website addresses: <http://www.canlii.org> or <http://www.lexum.umontreal.ca/csc-scc/en/index.html>.

personally approve all requests from RCMP officers to make use of these provisions, before a request is made for the consent of the Attorney General.

Article 3: Prohibition of expulsion and extradition

15. A new immigration act, entitled the *Immigration and Refugee Protection Act* (IRPA) came into force on June 28, 2002. IRPA includes as an objective and as a rule of interpretation the importance of fulfilling Canada's international obligations, in particular to refugees.
 3. (2) *The objectives of this Act with respect to refugees are*
 - (b) *To fulfil Canada's international legal obligations with respect to refugees and affirm Canada's commitment to international efforts to provide assistance to those in need of resettlement.*
 3. (3) *This Act is to be construed and applied in a manner that*
 - (f) *complies with international human rights instruments to which Canada is signatory.*
16. The risk of torture is recognized under IRPA as one of the grounds for conferring refugee protection. Torture is defined in the Act (s.97(1)(a)), by reference to article 1 of the *Convention Against Torture*. Another new ground leading to refugee protection under IRPA is the risk to life and the risk of cruel and unusual treatment or punishment (s.97(1)(b)). Refugee protection is conferred primarily by the Refugee Protection Division of the Immigration and Refugee Board. However, IRPA also provides for a Pre-Removal Risk Assessment (PRRA), prior to the removal of failed asylum claimants or others who are the subject of a removal order (s.112), including persons ineligible for a hearing by the Refugee Protection Division on grounds of security, human or international rights violations, serious criminality or organized criminality. The protection grounds under the PRRA also include the risks mentioned in s.97, including the risk of torture (ss.113(c) and (d)). All PRRA officers receive extensive training on a number of international conventions, including the *Convention against Torture*. In making decisions on PRRA applications, officers have continuous access to these conventions, as well as to the PRRA policy manual: <http://www.cic.gc.ca/manuals-guides/english/pp/pp03e.pdf>.
17. As a rule, Canada will not remove persons to a country where they risk being tortured (s.115). The risk of indirect *refoulement* to torture is also addressed in IRPA. A country can only be designated as a safe third country, i.e. where an asylum seeker can be removed to have their claim examined without that claim having been examined in Canada, if the proposed designated country complies both with article 33 of the *1951 Convention relating to the Status of Refugees* and article 3 of the *Convention Against Torture* (s.102).

18. The government of Canada takes its international obligations to protect people at risk of persecution, torture and other cruel and unusual treatment or punishment very seriously. The government also has an obligation to maintain the security of Canadian society. IRPA allows for the removal of foreign nationals who constitute a danger to the public or the security of Canada; however, this is to be done only in exceptional circumstances and after the risk to the individual has been carefully balanced against the risk to Canadian society. During this process the foreign national is given the possibility to present submissions and the Minister's decision is subject to review by the courts. The Supreme Court of Canada ruled in the case of *Suresh v. Canada (Minister of Citizenship and Immigration)* ([2002] 1 S.C.R. 3) that while deportation to torture will generally violate the principles of fundamental justice protected by the *Canadian Charter of Rights and Freedoms*, it might be justified under the balancing process, in exceptional circumstances.

Article 7: Prosecution of persons alleged to have committed torture

19. An Interdepartmental Operations Group, comprised of officials from Citizenship and Immigration⁴, the Department of Justice and the Royal Canadian Mounted Police (RCMP), was created in 1998 and coordinates Canada's War Crimes Program. Allegations of war crimes or crimes against humanity come from victims, witnesses, foreign governments, ethnic communities, non-governmental organisations, and from active citizenship and immigration files in which the applicant has testified before the Immigration and Refugee Board of his or her own criminal wrongdoing.
20. The Interdepartmental Operations Group has identified more than 80 suspects as individuals whose cases merit further attention. The cases are prioritized according to defined criteria which includes: the nature of the allegation, the seriousness of the crimes, the strength of the investigation, the position occupied by the individual, the ability to conduct documentary research to test the credibility of the allegation and the ability to secure cooperation from other countries or international tribunals in order to conduct the investigation. The investigations are complex and lengthy as they generally deal with crimes committed several years before on foreign territory. In some countries, the people are often struggling to overcome the full impact of the atrocities committed in their homes or in their neighbourhoods. In some circumstances, the conflicts have not completely ceased, making investigations even more difficult. Therefore, it can be difficult to gather reliable evidence that will be accepted in a Canadian court of law. Once the investigations are complete, if there is evidence of torture sufficient to create a reasonable likelihood of conviction by Canadian courts, appropriate charges may be laid.
21. The RCMP, with the assistance of the Department of Justice, has conducted modern war crimes investigations in at least 15 countries in the last year, including the Former Yugoslavia, Rwanda and other parts of Africa, Latin America and the Middle East. The Government of Canada is entering into agreements with other governments to allow Canadian officials to seek evidence in more countries.

⁴ As of December 12, 2003, the Canadian Border Services Agency has replaced CIC as a member of the Interdepartmental Operations Group.

22. There are several remedies available to deal with alleged war criminals and persons who have committed crimes against humanity—from extradition, to prosecution, to deportation. The Canadian government applies its immigration laws to deny entry and exclude such persons from using the protection accorded to genuine refugees. Canadian immigration legislation includes measures so that Canada does not become a safe haven for persons who commit acts of torture and cruel, inhuman or degrading treatment. The goal of Canada's War Crimes Program is to select the appropriate remedy in every situation. Where there is a reasonable prospect of a conviction and it is in the public interest to launch a criminal prosecution, the Canadian Government will do so. Since 1999, an annual report has been issued that details the activities of the War Crimes Program. All annual reports can be found at <http://www.cic.gc.ca/english/pub/index-2.html>.

Article 10: Education and training

23. The Fourth Report provides details on training pertaining to the Correctional Service Canada, RCMP, Canadian Forces, and Immigration Enforcement officers. Additional information is provided below.
24. Canadian Immigration Enforcement provides training and information to all immigration officers, as well as other law enforcement partners, about the *Convention Against Torture* as it pertains to immigration-related matters. Immigration training is comprehensive in that it considers Canada's international obligations, as well as the *Canadian Charter of Rights and Freedoms*.
25. The Enforcement Training Program and the Examining Officer training, which are mandatory for all officers who perform enforcement functions, discuss policies and procedures in place when performing an arrest and detention, including the treatment of individuals in custody.
26. The Canadian Forces (CF) have measures in place to ensure that CF personnel do not commit torture or other acts of cruel, inhumane or degrading treatment or punishment. Canadian Forces members are also trained to recognize and report any such acts if they observe them. The CF continue to train its military personnel on the standards of the *Convention*, by conducting the training that incorporates prohibitions against torture either as part of Law of Armed Conflict (LOAC) or Code of Conduct training.
27. This training is enhanced by initiatives such as the self-study package in Operational Law and draft manual of Operational Law prepared by the Office of the Judge Advocate General. These refer to international law, including international human rights law, that may be applicable to CF international operations. These materials also reiterate the legal obligations of the CF and all CF personnel to ensure that all detainees in CF control, regardless of legal status, are treated humanely. Operational Law encompasses both LOAC and international human rights law as two of the many legal regimes that impact on CF operations.

Article 11: Treatment of persons arrested, detained or imprisoned

Correctional Service Canada (CSC)

28. The *Corrections and Conditional Release Act* (CCRA) remains the core piece of legislation governing Correctional Service Canada. Section 69 of the CCRA provides that no person shall administer, instigate, consent to or acquiesce in any cruel, inhumane or degrading treatment or punishment of an offender who is or has been incarcerated in a penitentiary. This section prohibits the use of corporal punishment as a disciplinary sanction.

Use of Force

29. Correctional staff are accountable for using only as much force as is believed, in good faith and on reasonable grounds, to be necessary to carry out their legal duties. Every reasonable step is taken to explore and assess alternatives to the use of, or escalation in the use of, force. The use of force must be proportional to the risks and circumstances.
30. As noted in the Fourth Report, CSC policy requires that Use of Force Reports be completed, describing and justifying the type and amount of force used in specific contexts. All inmates are to be examined by health care professionals following any use of force situation. CSC policy also dictates that an Institutional Head must formally call for an investigation when he has reason to suspect that the amount of force used in a situation may have been excessive.

Inmate Discipline

31. Since Canada's Fourth Report, CSC has revised its policy on inmate discipline (http://www.csc-scc.gc.ca/text/plcy/cdshtm/580-cde_e.shtml). The new policy, which incorporates the former policy on disciplinary segregation, contains a number of changes that contribute to a fair and transparent disciplinary system that promotes the accountability and individual responsibility while contributing to public safety and an orderly, safe correctional environment. These changes include:
- that each institution assign a major court disciplinary advisor and an alternate to ensure consistency in the implementation and operation of the disciplinary process;
 - a clearer set of guidelines for determining the category of an offence;
 - a requirement to document the reasons for delays in the disciplinary process where exceptional circumstances apply; and
 - clear direction on the cell effects allowed in disciplinary segregation.

Special Handling Unit

32. As CSC's most secure facility, the Special Handling Unit (SHU) is reserved for inmates who have proven to be too dangerous for the safety of staff and other inmates to be

managed in any other maximum security facility. In September 2002, CSC amended Commissioner's Directive 551 – Special Handling Unit (<http://www.csc-sec.gc.ca/text/pley/cdshtm/551-cde/cde.shtml>). The amendments ensure that the decision-making responsibility for placements to and from the SHU rest with one person, the Senior Deputy Commissioner, instead of being split between the Commissioner and the National Review Committee. The Commissioner retains responsibility for responding to third level offender grievances related to SHU placements.

33. The policy regarding the SHU has also been amended to ensure that an external representative will participate as a member of the SHU Advisory Committee, which advises the Special Deputy Commissioner on SHU decisions. The participation of an external member provides further openness and accountability and is an effective means to ensure administrative fairness.

Women Offenders

34. Three Reports are discussed here: the Arbour Report; the Final Report of the Cross Gender Monitor; the Canadian Human Rights Commission's report entitled "Protecting Their Rights: A Systematic Review of Human Rights in Correctional Services for Federally Sentenced Women".
35. Canada's Fourth Report refers to the positive impact that the Commission of Inquiry into Certain Events at the Prison for Women in Kingston (the Arbour Report) has had on CSC by making the organization and its culture more respectful of the rights of both male and female offenders. The most significant developments stemming from the Arbour Report are outlined in Canada's Fourth Report. To date, CSC has taken decisive action on all recommendations in the Arbour Report that are within its jurisdiction.
36. In March 2004, CSC opened its sixth correctional facility for federal women offenders and the first of its kind in CSC's Pacific region. Located in British Columbia, the institution is currently comprised of seven houses, each with six individual bedrooms. These houses accommodate both minimum and medium security women.
37. During 2001, CSC implemented Structured Living Environment houses in the regional facilities to address an identified need for a more intensive response to minimum and medium security women with significant cognitive limitations or mental health concerns. The Structured Living Environment houses accommodate up to eight women and are staffed on a full-time basis with individuals who have been trained in specialized mental health intervention.
38. At the time of Canada's Fourth Report, approximately 15 percent of federally sentenced women were living in three units co-located within existing male facilities in Saskatchewan, Quebec and Nova Scotia. This was an interim measure to be used while CSC built specially designed Secure Units for women classified as maximum security. By February 2003, Secure Units were operational in CSC's Atlantic, Quebec and Prairie regions. The Secure Unit in the Ontario region is expected to be operational by the

summer of 2004. It is anticipated that the Secure Unit in the Pacific region will be operational by the summer of 2005.

39. As noted in Canada's Fourth Report, an independent Monitor the Cross Gender Monitor was appointed to provide a three-year review of the policy and operational impacts of cross gender staffing in the federal women's facilities. The Final Report of the Cross Gender Monitor (Final Report) was released in April 2001. Results revealed that over 80% of staff working in the regional women's facilities and over 80% of women offenders support the use of male front-line staff in selected functions. The Final Report further stated that 84% of staff and 68% of women offenders agree that having male staff working in a facility has positive effects. Despite these findings, the Final Report made eleven recommendations, the most significant of which was the termination of cross gender staffing in the regional women's facilities and healing lodge. The remaining recommendations focus on staff training and screening, sexual misconduct issues, and monitoring activities.
40. Following release of the Final Report, CSC conducted extensive internal and external consultations with regard to the Monitor's main recommendation. Despite some disagreement, the majority of parties indicated that they are in favour of maintaining a percentage of men as front-line staff in women's institutions. CSC has since developed a working group to evaluate the impact that male front-line workers have on operational practices in women's institutions. This working group will determine the frequency with which operational practices are dictated by mandated, gender-specific policies. Such a determination will result in the opportunity to examine privacy and dignity issues, the impact on daily operations and financial implications. Once the working group has determined the frequency with which operational practices are impacted by mandated, gender-specific policies, CSC will review this data to establish the most appropriate response to the Final Report.
41. In January 2004, the Canadian Human Rights Commission released a report on federally sentenced women entitled, *Protecting Their Rights: A Systematic Review of Human Rights in Correctional Services for Federally Sentenced Women*. The Report reviews the extent to which federal corrections provides services that respond to the specific needs of women, and identifies "ways of bringing the correctional system into line with the purpose of the *Canadian Human Rights Act*." It notes that CSC has made progress in developing a system specific to the needs of women offenders. However, the Report also raises a number of issues related to federally sentenced women including: the assessment and classification of women offenders; health issues; programming; reintegration; accountability; and, external redress. In addition, the Report includes 19 recommendations related to risk and need assessment; safe and humane custody and supervision; rehabilitation and reintegration programming; and mechanisms for redress. CSC is currently studying the recommendations and will prepare a comprehensive response to the report. The full report can be viewed at:
www.chrc-ccdp.ca/legislation_policies/consultation_report-en.asp.

Aboriginal Offenders

42. The over-representation of Aboriginal people in the federal correctional system continues to be a pressing challenge for the criminal justice system as a whole. Aboriginal people make up two percent of the Canadian adult population, but account for 17% of all federal offenders.
43. Since Canada's Fourth Report, CSC's strategic direction regarding the Aboriginal offender population has moved from a focus on individual programs to a broader focus on the entire correctional continuum. This means providing a whole range of integrated, aboriginal-specific services from intake to discharge. This integrated approach includes: the intake assessment process; intervention and treatment initiatives; and, maintenance and release opportunities. In addition, CSC and the broader Aboriginal community continue to provide a range of services to the Aboriginal offender population through placements in Healing Lodges.
44. Placements at Healing Lodges help address the needs of the Aboriginal offender population through traditional Aboriginal teachings, ceremonies, contact with Elders and children, and interaction with nature. Service delivery is premised on individualized plans, a holistic approach, interactive relationships with the community and a focus on preparation for community release. As of April 2004, there are eight Healing Lodges in operation with the capacity to manage 339 offenders in total.
45. In November 2002, CSC published a report entitled, *An Examination of Healing Lodges for Federal Offenders in Canada*. The report examined both Healing Lodges run by CSC and those run by the Aboriginal community. The report raises a number of issues, all highlighting the need to strengthen current Healing Lodges before endeavouring to create new ones. The key issues raised in the report include: human and financial resources, staff training, the efficiency of the transfer process, the effectiveness of communications between Healing lodges and CSC institutions and the amount of community involvement in the operations of the Healing Lodges. CSC has developed an action plan to respond to the aforementioned report, and a final report on the Action Plan is to be delivered to CSC's Executive Committee in October 2004.
46. Since 2000-2001, CSC has hired Aboriginal Community Development Officers (ACDOs) in each region, in order to develop a national infrastructure for the consistent delivery of Aboriginal community correctional initiatives. The key legislative provision is section 84 of the *Corrections and Conditional Release Act*, which provides that where an inmate who is applying for parole has expressed an interest in being released to an aboriginal community, the Service shall, if the inmate consents, give the aboriginal community adequate notice of the inmate's parole application, and an opportunity to propose a plan for the inmate's release to, and integration into, the aboriginal community.
47. The ACDOs roles and activities have centered on the following areas: promoting the provisions of section 84 and increasing Aboriginal community involvement through awareness and training; carrying out awareness training for parole officers and the

National Parole Board; promoting the provisions of section 84 of the Act and increasing offender awareness; promoting the involvement of the Aboriginal community in institutions; implementing measures to ensure consistent follow-up where section 84 has been identified as an option. Since 2000/2001, 175 section 84 release plans were undertaken by Aboriginals.

48. CSC has also developed a strategy for working with Aboriginal offenders in institutions that provides for enhanced programs and services for those who wish to pursue a healing path. Entitled *Aboriginal Pathways in Federal Corrections*, or the Aboriginal Pathways Strategy, the strategy deals with the establishment of healing environments at all security classifications and is designed to provide intensive Aboriginal programs to address personal development as well as the opportunity to learn effective social skills, responsible behavior and attitudes. One of the goals of Pathways is to build a continuum of Aboriginal specific services from intake to release within existing correctional facilities. In 2002, this concept was piloted in the Prairie region at Saskatchewan Penitentiary and Stony Mountain Institution. It is running currently also at La Macaza Institution in Quebec. It is intended to be introduced in other regions in the near future.

Inmate Suicides

49. In September 2002, CSC modified and expanded its policy entitled "Commissioner's Directive 843 - Prevention, Management and Response to Suicide and Self-Injuries" (http://www.csc-scc.gc.ca/text/plcy/cdshtm/843-cde_e.shtml). The following key elements were added to the policy to ensure continuous improvement in prevention and intervention efforts with respect to suicide and self-injury: an outline of the responsibilities of the Institutional Head, District Director, psychologists or appropriate health service professionals and other staff; and a requirement that within 24 hours following the transfer of an offender from one CSC facility to another, the sections of the Offender Intake Assessment pertaining to suicide must be re-administered.

Royal Canadian Mounted Police

50. The RCMP reviewed its interview and interrogations procedures in the fall of 2003 to ensure consistency with the spirit and the intent of the *Convention against Torture*, recent case law and best practices. RCMP policy with respect to the treatment of persons arrested, detained or imprisoned take into account all relevant factors of the Convention. A person in RCMP custody will also be treated in accordance with rights provided under Canadian law.
51. The RCMP actively seeks the input of Aboriginal peoples through mechanisms such as the RCMP Commissioner's National Aboriginal Advisory Committee, which is comprised of 13 Aboriginal community members from across Canada who meet twice a year to advise the RCMP on issues affecting Aboriginal people.
52. The Public Safety Cooperation Protocol between the Assembly of First Nations (AFN) and the Royal Canadian Mounted Police (RCMP) was signed on May 18, 2004. The

Protocol is the first of its kind between the two national organizations and is the result of proactive discussions. The purpose of the Protocol is to establish a trusting and reciprocal relationship with a focus on public, community and police officer safety.

Immigration

53. The Government of Canada has taken measures to address the circumstances of those who are detained pursuant to the *Immigration and Refugee Protection Act* (IRPA). National standards of care and treatment for detainees in facilities have been implemented, and a detention monitoring agreement has been signed with the International Committee of the Red Cross. An information brochure for detainees outlining their rights, policies that may affect them and other general information has been published. It is entitled "Deprived of freedom" and can be found on Internet at: <http://www.icrc.org/Web/Eng/siteeng0.nsf/iwpList528.B462B98285B30773C1256C79004D4EE7>.
54. A national detention data reporting system has also been established to collect sex disaggregated data. Where possible and appropriate, detention facilities are being modified to accommodate women who wish to have their children with them. In a special initiative, one provincial facility in Quebec has provided a home for use in the event that a woman wishes to have her children detained with her.
55. The IRPA affirms as a principle that a minor child shall be detained only as a measure of last resort and that such decisions shall take into account the best interests of the child.

Sedation

56. The current policy regarding the involuntary sedation of clients under removal is found in Enforcement Manual 10 - Removals, Section 24 (<http://www.cic.gc.ca/manuals-guides/english/enf/index.html>). It states that under no circumstances will any foreign nationals be taken to a physician solely for the purpose of that foreign national being placed under sedation for removal from Canada. Where a foreign national has been taken to a physician for some other legitimate medical reason, the physician may address the question of sedation for removal as a secondary issue. If the physician decides to prescribe medication, the foreign national concerned must be asked if he or she wishes to take such medication, and if not, no medication is to be administered.

Hearings

57. The current policy regarding the role of hearings officers in preparing a case for intervention before the Immigration and Refugee Board and during an intervention hearing is found in Enforcement Manual 24 - Ministerial Interventions, Section 7 (<http://www.cic.gc.ca/manualsguides/english/enf/index.html>). Hearings officers represent the Government and, as such, they are instructed to always act professionally. The guidelines make it very clear to hearings officers that they have a duty to assess the sensitivity of each case when preparing for an intervention. Issues such as a claimant

having been tortured, witnessed massacres or having been detained in a place where torture was practised, should be of specific concern to the hearings officers. It is even suggested that a pre-hearing conference be held to limit the areas of sensitivity during the hearing. During an intervention hearing, the officer is reminded to carefully consider the necessity of asking a particular question related to a sensitive issue, such as those listed above. The officer is tasked with monitoring a claimant's reaction to such questions and will consider modifying their approach to make the claimant more comfortable.

National Defence

58. In light of recent events highlighting concerns respecting torture of detainees by countries allied with Canada, the Canadian Forces (CF) has undergone a review of its policies and procedures regarding the detention and handling of individuals in order to ensure compliance with the *Convention Against Torture* and other relevant international legal instruments.
59. Specifically the CF has reviewed its procedures related to interrogation and tactical questioning. It has been noted that the primary aim of interrogation and tactical questioning is the timely extraction of information from a prisoner of war in a humane manner. As a part of CF policy, all interrogation will comply with relevant international law, including conventions and agreements such as the Third Geneva Convention and the *Convention Against Torture*.
60. All individuals used for interrogation purposes are instructed that all individuals subject to interrogation or tactical questioning shall be treated humanely. No physical or mental torture, nor any other form of coercion, may be inflicted on an individual to secure from them information of any kind. Individuals who refuse to answer may not be threatened, insulted, or exposed to unpleasant or disadvantageous treatment of any kind.

Article 12 : Impartial and immediate investigation, and Article 13 : Allegations of torture or abuse by authorities

Correctional Service Canada (SCC)

61. In March 2003, CSC released a *Policy Bulletin on Harassment* which clarifies CSC's policies and redress procedures pertaining to harassment. A further policy clarification was issued June 9, 2003, regarding the investigation of allegations of harassment made by offenders. The clarification incorporates the procedural safeguards outlined in the anti-harassment policy for government employees, notably that a trained harassment investigator from outside the institution or parole office from which the complaint originated will conduct a thorough investigation. The institutional head, Regional Headquarters or National Headquarters, can convene an investigation. In late 2003 and early 2004, CSC conducted training to reinforce the processes involved in handling offender harassment complaints (including allegations of staff misconduct). A monitoring system is currently being developed to ensure that responses to these complaints are in compliance with CSC policy.

62. From April 2000 to March 2004, CSC recorded a total of 89,272 offender complaints and grievances. The majority of these complaints and grievances (71,483) were investigated and responded to at the operational level (complaint and first level). Of the remainder, 11,912 were managed at the regional (second) level and 5,877 were examined and responded to at the national (third) level.

Royal Canadian Mounted Police (RCMP)

63. The Commission for Public Complaints Against the RCMP continues to operate as outlined in the Fourth Report; however, reports are forwarded to the Minister of Public Safety and Emergency Preparedness, which is now the Minister responsible for the RCMP.⁵ By way of additional information, it can be noted that, at any stage of the complaint process, the Commission Chair may also conduct an investigation where the Chair considers it advisable in the public interest, regardless of whether the RCMP has investigated or disposed of the complaint. On completion of the investigation, the Chair prepares and delivers to the Commissioner of the RCMP and the Minister of Public Safety and Emergency Preparedness a written report setting out findings and recommendations. After receiving the Commissioner's response, the Chair prepares a final report that is distributed to all parties, the RCMP Commissioner and the Minister of Public Safety and Emergency Preparedness.
64. Since May 2000, a number of public complaints against the RCMP alleging improper use of force, oppressive conduct, and improper arrest and search have been made. The events which gave rise to the majority of these complaints occurred at the time of arrest or during transportation to detention facilities.
65. For the Commission, isolated public complaints that may meet the "reasonable person" criteria for cruel, inhuman or degrading treatment or punishment, as stated in Article 16 of the *Convention* include:
- extended period of detention without justification;
 - cellblock overcrowding;
 - failure to provide a prisoner a meal at a normally scheduled mealtime;
 - failure to provide a prisoner his / her own medication;
 - failure to provide the amenities or maintain clean cells;
 - incarcerating a youth with an adult;
 - assaulting a detainee in a cellblock area; and
 - failure to conduct a strip search in an appropriately sheltered location.
66. Some complaints have alleged failure to seek medical attention for a detainee who appears ill or injured or who claims to be ill or injured.

⁵ The Office of the Solicitor General was incorporated with the new Department of Public Safety and Emergency Preparedness Canada in early 2004.

67. The Commission and the RCMP have addressed these complaints. The Commission's reports can be found at: <http://www.cpc-cpp.gc.ca/DefaultSite/index.aspx>.
68. From May 2000 to March 2004, the Commission received a total of 4,787 complaints. Generally, the Commission receives half of all the complaints lodged, the other half being received by the RCMP directly. After receiving a response to their complaint by the RCMP, 844 of these complainants requested a review by the Commission. During this time period the Commission produced 678 reports in which the Commission was satisfied with the conduct of the RCMP members in question; and 168 interim reports, where the Commission concluded that the subject members or the subject members' conduct, behaviour, or performance failed to conform to the standard prescribed in law or policy.
69. The Commission reviewed a number of complaints between May 2000 and March 2004 regarding the care and treatment of detainees. While some of the complaints were found to be unsubstantiated, the Commission did make the following comments, among others, to the RCMP:
- RCMP members should continue to refer to their Incident Management/Intervention Model to determine which level of force is appropriate in a situation;
 - medical care must be provided to detainees when requested;
 - RCMP members must treat detainees with dignity; and
 - RCMP detachment members should be reminded that they are responsible for the care and well-being of detained persons.
70. In cases where the Commissioner of the RCMP agreed with the Commission's findings and recommendations, depending on the cases, he may have directed that policy be created or amended, that training be designed and/or provided, that apologies be extended, and/or that operational guidance be provided. Operational Guidance is the process of coaching, training or directing the member, in a non-disciplinary fashion, toward the prescribed standard.
71. There have also been allegations with respect to the release of persons into adverse climates. These allegations have involved persons who were not detained, but whose vehicle was impounded, or detainees who were released from incarceration. Remedial action was taken in cases where the allegations were determined to be founded.
72. On January 28, 2004, the Government of Canada announced an inquiry into the actions of Canadian officials in the case of a specific individual. In addition to the factual inquiry being conducted by a judge appointed as the Commissioner of the inquiry, the inquiry mandate includes making recommendations on an independent arm's length review mechanism for the RCMP's national security activities.

Asia-Pacific Economic Cooperation (APEC) Conference Inquiry

73. An RCMP interim report on the results of the public interest hearing on complaints surrounding the RCMP's involvement in the Asia-Pacific Economic Cooperation (APEC) Conference was completed on July 31, 2001. The Chair of the Commission for Public Complaints Against the RCMP submitted her final report on March 25, 2002. The RCMP responded to the Commission's recommendations and has made policy changes in the following areas, among others: policing public order events; opportunity for protest; relations with protestors; body search policy; privacy for personal searches; and release of prisoners.
74. Overall, the Commissioner of the RCMP accepted that errors were made in planning security arrangements at the University of British Columbia site and that the RCMP had failed to achieve a high state of readiness. Additional observations included that the RCMP:
 - Learned considerably from the experience and that, since APEC, has gained valuable experience at several major public order events such as the Francophone Summit in Moncton, New Brunswick (September 1999); the meeting of the Organization of American States in Windsor, Ontario (June 2000); and the Summit of the Americas in Quebec City (April 2001).
 - Conducted an extensive review of their readiness and response to major public order events, including initiating ongoing consultations with other police agencies, nationally and internationally, to share information and identify best practices in the provision of security.
75. The recommendations from the APEC public hearing report have been implemented or are actively being addressed. This report has had a positive impact on the RCMP's approach to major public order events.
76. In 2000, the RCMP created a national public order-working group. As a result of the group's recommendations, a public order unit was established in the newly formed Critical Incident Program to ensure better preparedness in policing major incidents whether scheduled events or spontaneous occurrences.
77. The Critical Incident Program presently maintains the national program coordination for the Negotiators, Incident Commanders, Public Order/Tactical Troops, Emergency Response Teams, Emergency Medical Response Teams, and Emergency Planning. Coordinators have the mandate to ensure that policies and training for the respective areas of expertise is maintained.
78. A Tactical Operations Manual has been re-written and covers the following areas:
 - New training course for tactical troop commanders
 - Basic courses for troop members, instructors and chemical weapons instructors

- Use of Police Service Dogs
- Deployment of less lethal/chemical munitions
- Warnings to crowds
- Training requirements to perform specialty duties
- Formal Emergency Medical Response Team status

79. The National Tactical Troop Training Committee was formed to ensure the existing training courses are current and to oversee the development of new public order training courses (arrest team, bicycle team response, object removal teams).
80. The Critical Incident Program is also working with several other major Canadian police agencies to formalize a training program for public order liaison/negotiators to deal with protestors and activist groups in a proactive manner before, during and after an event to minimize confrontation. It is now standard practice to use negotiation-trained personnel or those assigned to specialty liaison teams to perform a similar duty.

Summit of the Americas

81. The Commission reviewed a complaint regarding the actions of some RCMP members at the April 2001 Summit of the Americas (SOA) Conference in Québec City. This complaint involved the treatment of protestors by the RCMP. At the SOA Conference, the RCMP used baton rounds and tear gas to disperse protestors when a section of the perimeter security fence had been breached, which posed a threat to the Internationally Protected Persons in attendance.
82. The Commission recommended clarifying the policy on warnings to allow sufficient time for protestors to vacate an area prior to using force to remove them. The RCMP Commissioner agreed with the majority of the findings. (It should be noted that this event took place before the Commissioner had responded to the Commission's report on the events at the APEC conference.)
83. The RCMP has incorporated some of the Commission Chair's recommendations on policy. For example, all members, immediately before assignment to an event such as the SOA, must undergo instruction in existing tactical operations policy, and must demonstrate knowledge of it annually. Moreover, current instruction on warnings given at the Tactical Troop Commander's pilot course will be reviewed and modified to reinforce the importance of allowing a crowd sufficient time to disperse.

National Defence - Somalia Inquiry

84. Following the events in Somalia in 1993 a number of individuals were charged in respect of the death of a Somali teenager. All proceedings related to the incident have been concluded with the exception of those against MCpl Matchee who has yet to stand trial for the murder and torture of Shidane Arone, as he has been declared unfit to stand trial. Reviews take place every two years to determine whether he is fit to stand trial pursuant

to section 202.12 of the *National Defence Act*, to determine whether sufficient evidence can be adduced to put the accused person on trial.

Article 14: Redress, compensation and rehabilitation

85. One of the integration programs for Canadian permanent residents, Immigrant Settlement and Adaptation, helps immigrants, including refugees, settle, adapt and integrate into Canada by supporting orientation, para-professional counselling, referral to professional services in the community, etc. For example, in 2003-04, \$307,602 in contribution funding was provided under this program to the Canadian Centre for the Victims of Torture to assist newcomers to Canada who had been victims of torture prior to their arrival in Canada.
86. The Government of Canada also currently provides \$60,000 per annum in funding to the United Nations Voluntary Fund for Victims of Torture.

Article 16: Prevention of other acts of cruel, inhuman or degrading treatment or punishment

87. Canada's Fourth Report had noted that section 43 of the *Criminal Code*, which provides a limited justification in cases where a parent or person acting in the place of a parent uses reasonable force in the correction of a child, was the subject of a legal challenge under several provisions of the *Canadian Charter of Rights and Freedoms*. At the time of the Fourth Report, the matter was on appeal to the Supreme Court of Canada. On 30 January 2004, in the case of *Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)*, the Supreme Court upheld the legislation. According to the Court, limitations in the statutory and case law provided adequate procedural safeguards to protect the right to fundamental justice and the provision did not authorize the use of force likely to cause harm. The requirement that any force used must be reasonable also ensured that criminal liability would apply in appropriate cases. Further, provided that any force met the statutory reasonableness requirement, it could not be said that it amounted to cruel or unusual treatment or punishment. Finally, taking into account the need to provide a safe environment for children, the need for appropriate guidance and discipline, and the fact that, absent the justification, Canada's criminal law of assault would apply even to the most minor application of force, the justification did not offend the constitutional prohibition on discriminatory measures⁶. The Government of Canada continues to maintain its previously-stated policy in support of measures that advocate against the use of corporal punishment of children, but it also recognizes the need for limitations on the criminal law of assault insofar as it would otherwise apply in such cases. It also notes that, in addition to the application of the criminal law in cases of child-abuse, extensive child-welfare and child-protection legislation remains in effect at both the federal and provincial levels.

⁶ Full text of the judgment is available on-line at: <http://www.lexum.umontreal.ca/csc-scc/en/rec/index.html>.

Part II

Measures Adopted by the Governments of the Provinces

Newfoundland and Labrador

Article 2: Legislative, administrative, judicial or other measures

88. The policy directive governing internal inmate disciplinary tribunals within the Adult Custody Sector has been significantly revised with the incorporation of several additional protections available to adult offenders in custody:
- clarification of the specific types of disciplinary offences for which an inmate may be held accountable;
 - a categorization of offence seriousness and associated limitations on the extent of penalties which may be imposed;
 - a requirement for full disclosure except where such would compromise personal safety or institutional security;
 - strict limitations on the use of pre-hearing detention;
 - incorporation of additional safeguards and protections for the inmate during the disciplinary process; and
 - an appeal process.

Article 10: Education and training

89. A new, updated version of the Use of Force Policy and Procedures has been constructed, including the incorporation of sections dealing with legislative authority, guiding principles, the use of force continuum, the situation management conceptual model, post incident debriefing and the conduct of investigations. Additionally, selected personnel have received intensive training in the Use of Force and will be responsible for conducting training for all corrections personnel.

Article 11: Treatment of persons arrested, detained or imprisoned

90. As the result of a complaint made by an inmate that he had been confined in a restraint chair contrary to policy, an investigation was initiated that concluded that the governing policy needed to be revised to ensure a greater degree of transparency and accountability. The John Howard Society was invited to participate in the review, through which a new policy on the use of the restraint chair was formulated. The policy now limits the use of the device to very specific circumstances, requires advance authorization by a senior manager, requires ongoing audiovisual surveillance and obliges the Superintendent of Prisons to review the circumstances surrounding each occasion when the device is engaged.
91. In order to address possible over-representation of Aboriginal inmates in provincial correctional facilities, the provincial Department of Justice, both on its own and in conjunction with other relevant government departments and community organizations, has developed and implemented a number of measures that are intended to prevent

violence and reduce recidivism by enhancing aboriginal participation in the major components of the justice system and by encouraging greater aboriginal and community control over the administration of justice.

92. In addition to ongoing efforts by policing and correctional services to recruit aboriginals and in addition to long-term initiatives designed to familiarize aboriginals with the operation of the criminal justice system such as the Native Court Worker Program, courts engaged in the sentencing process have followed the direction contained in section 718 of the *Criminal Code* to 'consider all available sanctions other than imprisonment' when imposing sentence upon aboriginal offenders. In this regard courts have increasingly relied upon the use of sentencing circles in aboriginal communities. The design of the new Supreme Court in Happy Valley-Goose Bay is to include space for sentencing circles to be held.
93. The Department of Justice, together with other government departments as well as representatives of non-governmental organizations, is also engaged in the exploration of alternatives to criminal process which will be of particular significance in aboriginal communities. For example, the Department, along with other government agencies and non-governmental organizations, is represented on a Steering Committee that is currently involved in the development of a community mediation program based in Happy Valley-Goose Bay to be directed at both offenders and victims in aboriginal communities. Since this program is in the developmental stages only, no evaluation has yet been conducted.
94. Aboriginal offenders who have been convicted of criminal offences are eligible to participate in treatment programs offered at a healing facility owned and operated by the Innu Nation. Programs offered at this facility include substance abuse, anger management and violence prevention. Both offenders serving sentence in the community as well as institutional inmates are eligible to apply for such programming. Since this facility has been in operation for only a year, no evaluations have been conducted to determine its success in reducing recidivism and over-representation.
95. During the past five years, pursuant to the National Community Crime Prevention Strategy, the Department has also partnered with Justice Canada to sponsor a number of time-limited community-based crime prevention initiatives in aboriginal communities. For example, the Department has supported the 'Hands are not for Hitting' program in Nain, which is an anti-violence program aimed at aboriginal children. The Department has also supported workshops focusing on the safety of aboriginal women. These and other analogous initiatives are targeted at violence in aboriginal communities with the ultimate goal of reducing violence generally and thus, in the long term, decreasing the number of aboriginals convicted of crimes involving violence.
96. The Department is also responsible for the delivery of policing services in aboriginal communities and has, until recently, funded two aboriginal community constables to provide assistance to the RCMP in the communities of Makkovik and Postville pursuant to a Community Policing Agreement, which was executed in 2000. This program has been reduced to include only Makkovik but the province has begun negotiations with the

Government of Canada and the five Inuit communities in coastal Labrador to conclude a First Nations Community Policing Agreement. This is a cost-shared policing program aimed at aboriginal communities, which is intended to produce a more culturally appropriate and responsive policing service in aboriginal communities. This agreement, when concluded, will be the only one of its kind in Canada applicable to Inuit and through savings realized under the agreement, the province hopes to reactivate the community policing agreement and reinstate aboriginal community constables in at least one of the Inuit communities. The province has also had discussions with the Innu communities about negotiating a First Nations Community Policing Agreement.

97. The Department is also involved in initiatives which are intended to transfer control over to the delivery of justice to aboriginal communities. The province currently partners with Justice Canada in the delivery of the Aboriginal Justice Strategy. Pursuant to the Strategy, the province supports the Miawpukek First Nation Justice Initiative, which promotes Mi'kmaq traditional justice initiatives that promote pre-charge diversion of Mi'kmaq and post-charge community involvement in sentencing. The ultimate goal of this program which is in its second year of operation is the implementation of a community-based holistic justice program which formalizes Mi'kmaq traditional justice practices. The program is in its developmental phase. During 2004-2005, the Mi'kmaq will undertake an informal self-evaluation, which will form part of a year-end activity report, and with government, will develop a longer-term evaluation strategy.
98. Between 2000-2004 there were 10 complaints of misconduct/assault made against correctional officers. In one case the correctional officers admitted the wrongdoing, in 6 cases full investigations were completed and the complaints were not substantiated, in 3 cases the records were checked and there was no evidence found to substantiate the complaints.

Prince Edward Island

99. The Government of Prince Edward Island (PEI) continues to be in compliance with the provisions of the *Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment*. The legislative and administrative measures outlined in PEI's previous report under this treaty remain in effect. No significant developments have occurred during the period of this report that would add to the information already provided to the Committee.

Nova Scotia

100. The Government of Nova Scotia continues to be in compliance with the provisions of the *Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment*.

Developments

101. During the period of this report, the Government of Nova Scotia has enacted the *Fatality Investigations Act*, S.N.S. 2001, c.31. This Act continues to require an investigation into the cause of death of any person detained in custody in a correctional institution or an inmate of a hospital by the Chief Medical Examiner who may in turn recommend a judicial inquiry, and so supports implementation of the Convention.
102. The legislative and administrative measures outlined in previous reports under this treaty remain in effect. No other significant developments have occurred during the period of this report that would add to the information already provided to the committee.

New Brunswick

103. The Province of New Brunswick fully supports the principles of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.

Article 11: Treatment of persons arrested, detained or imprisoned

104. No new measures have been implemented within New Brunswick's correctional system that would impact the rights guaranteed under the Convention. There have been no violations of the Convention standards through either the treatment or imprisonment of individuals.

Article 13: Allegations of torture or abuse by authorities

105. In 2000, the *Education Act* was amended to include a non-professional conduct section that requires mandatory reporting when non-professional conduct is suspected. This amendment further supports the Department of Education's *Policy for the Protection of Pupils in the Public School System from Non-Professional Conduct* (Pupil Protection Policy) that came into effect in 1996. This policy is intended to:
- Protect pupils from non-professional conduct by adults to which pupils may be exposed by virtue of being pupils, including physical, sexual, and emotional abuse and discrimination, and
 - Eliminate non-professional conduct through prevention and effective intervention.
106. This policy protects all pupils who are registered in public schools in New Brunswick regardless of their age. This policy applies to all adults whose job or role on behalf of the public school system places them in contact with pupils. This includes all school personnel, contract and casual employees, as well as student teachers and volunteers.
107. Complaints and investigations of abuse by municipal law enforcement authorities are dealt through the New Brunswick Police Commission.

Québec

108. The Government of Québec has undertaken to comply with the provisions of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* by adopting Decree No. 912-87, on June 10, 1987, in compliance with its internal law.

Article 2: Legislative, administrative, judicial or other measures

109. In 2000, the National Assembly adopted the *Police Act* (R.S.Q., c. P-13.1) which *inter alia* replaces the *Act Respecting Police Organization*. This statute recommends an approach promoting police officers' responsibilities in the denunciation of derogatory conduct, whether they are breaches of the Code of Ethics, Internal Disciplinary Rules, or of the Criminal Code.
110. The main points to emphasize are:
- improvement of the professional training programs for the police personnel in patrolling, investigation and management;
 - a better definition of the mission and powers of l'École nationale de police du Québec;
 - the establishment of a training and research Commission within l'École nationale de police du Québec;
 - a clarification of the role and powers of the special constables;
 - a complaint process to the Police Ethics Commissioner better controlled and mindful of the citizens' individual rights;
 - Police Ethics Commissioner's investigatory powers defined to give the Commissioner maximum flexibility whenever violations of fundamental rights are reported; and
 - an external control of the extensive police activity.
111. In 2003, the National Assembly adopted another bill which aims to abolish imprisonment as the ultimate enforcement measure against convicted traffic and parking offenders. This new legislation, expected to come into force shortly, provides that a person shall not be deprived of his/her liberty solely for the reason that he/she failed to pay his/her fines.

Article 4: Criminalization of torture

112. The *Criminal Code* (s. 269.1) prohibits torture of a citizen by a public official. In R.C. Rainville, J.E. 2001-1816, Court of Quebec, 200-01-048761, the accused, a member of the military, without the knowledge of the Canadian Armed Forces, conducted a simulation of a terrorist operation at the Citadel of Québec, a site occupied by members of the military and where firearms are warehoused. As the members of the military had not been advised of the exercise, they believed they were being attacked by terrorists. The accused was found guilty and sentenced to 20 months of prison to be served in

society, with a 2 year probation principally implying the obligation to carry out 160 hours of community service and to pay a sum of \$4,000.00 for the benefit of a Québec's Crime Victims' Assistance Centre (Centre d'aide aux victimes d'actes criminels), as well as a prohibition to possess firearms, explosives or explosive substance for a period of ten years.

Article 10: Education and training

113. Correctional services in Québec continue to offer training sessions to their personnel. Respect for rights and freedoms are taught as part of this training. Ongoing monitoring of physical intervention procedures is also conducted.
114. Implementation of the *Act Respecting the Protection of Persons whose Mental State Presents a Danger to Themselves or to Others*, enacted in 1997, necessitated the training of several health and social services advocates, the establishment of crisis services and the linking of police services and crisis intervention support services.

Article 11: Treatment of persons arrested, detained or imprisoned

115. In 2002, Québec's National Assembly adopted the *Québec's Corrections and Conditional Release Act*. This Act, for which no date of entry has been made yet, clearly reaffirms that the reintegration objective must remain the first principle of our Correctional System.
116. Since November 2002, the Correctional Services of Québec have been co-operating in the implementation of appearance procedures by telephone, on weekends and on public holidays. The aim of these procedures is to make sure that persons who are arrested appear before a Justice of the Peace, who rules on their release or their committal to custody, prior to the trial, and this as quickly as possible following arrest. In this manner, a person who is committed to custody following arrest is not detained at the police's discretion but in accordance with the ruling of a judge.
117. Certain additions have been made in the *Manual of police practices*, regarding the implementation of new practices.
 - The police practice described in the manual provides working guidelines for police officers regarding offences committed by youths that lead to extra judicial measures, methods of ensuring the fundamental rights, types of sentencing measures and links existing with alternative judicial organisations in Québec. These new practices guarantee appropriate treatment to adolescents while taking into account possible extra judicial measures better adapted to youth development;
 - the exercise of the power of arrest and detention has been better defined;
 - the practice regarding the recording of audiovisual examinations and interviews was modified in June 2000; and
 - procedure to follow in order to take samples and analyze a person's DNA was developed in September 2002.

118. During the reporting period, Correctional Services updated their procedures for dealing with incarcerated persons with disciplinary problems.
119. The number of individuals admitted to detention facilities is dropping steadily. In 2000-2001, 43,911 individuals entered prison. This number slightly increased to 44,697 in 2001-2002, and fell back to 43,080 in 2002-2003. Preliminary figures for 2003-2004 suggest that this decline in admissions is continuing, because only 40,492 individuals have entered prison up to now.

Article 13: Allegations of torture or abuse by authorities, and Article 14: Redress, compensation and compensation

120. There are several types of recourse available to citizens who feel their rights have not been respected or who have been treated incorrectly. With respect to police work, all citizens can file a complaint with the Police Ethics Commissioner. The procedure followed in such cases is set out in paragraphs 87-90 of Canada's Second Report. The office of the Ethics Commissioner received 1,426 complaints in 2003-2004 (April 1, 2003 to March 20, 2004). When a complaint is received, the Commissioner ensures that the complaint admissibility conditions have been met, namely: the one-year time limit set out by law within which a complaint must be made; that the allegations pertain to a member of a police service or a special constable; that this person was on duty at the time of the alleged incidents and that the alleged conduct contravenes Québec's Police Code of Ethics. As a result, the Commissioner refused to investigate 697 complaints (52.9%), tried conciliation between the parties in 465 cases (35.3%) and decided to investigate 121 cases (9.2%). After these investigations, the Commissioner decided to commit police officers to appear before the Police Ethics Board with regard to 29 cases.

Article 16: Prevention of other acts of cruel, inhuman or degrading treatment or punishment

121. Ministerial orientations and a plan of action were published in December 2002 on the exceptional use of control measures within health facilities, including restraint measures, isolation, and the use of chemical substances. Certification standards were established in June 2003 for restraint equipment and the furnishing of isolation rooms.
122. Operating procedures for facilities that include child occupants must be approved by the managing board of the facility and posted. These procedures must be explained and a copy given to the child and a copy forwarded to the regional and national regulatory authorities. In order to meet these legal requirements, each facility housing children in trouble must adopt a policy regarding the operational procedures and the use of disciplinary measures. These policies must recognize the child's right to contest the measures used by means of an internal appeal mechanism and, outside the facility, by an appeal to the Commission des droits de la personne et des droits de la jeunesse.
123. In order to ensure a greater consistency in the application of other control and protection measures, the Association des centres jeunesse du Québec, which brings together

facilities housing children, established overall policies that guide the adoption of policies within each facility concerning:

- establishment of an intensive mentoring program;
- use of search and seizure procedures;
- recourse to restraining of youth; and
- use of isolation of youth.

124. The use of the measures prescribed by these different policies is subject to monitoring by the managing board of each facility.

125. Case law in Québec at times qualifies certain police actions as degrading treatment and further reveals cases of abusive use of force. These cases are most often examined by the Police Ethics Committee or by the Court of Québec to which the Committee decisions may be appealed. During the period covered, in *Lapointe v. Monty*, D.T.E. 2004T-324, two police officers were convicted under the Code of Ethics of Québec Police Officers for having failed to decontaminate a troubled woman, whom they had arrested by using Cayenne pepper, but they decontaminated themselves.

Ontario

General information

126. In November 2000, the Ontario Human Rights Commission updated its *Policy on Female Genital Mutilation*. This revision was partly in response to the federal government's amendment to the *Criminal Code* in May 1997 that included as aggravated assault the performance of female genital mutilation. The Commission's policy continues to recognize female genital mutilation as a violation of the rights of girls and women to physical integrity. The policy views the practice as a health hazard and a form of violence against women and girls. The Commission continues to accept, investigate and make a determination on any complaints involving female genital mutilation filed by victims of the practice or their legal guardian.

Article 2: Legislative, administrative, judicial or other measures

127. The Ministry of Community Safety and Correctional Services released recently a revised and updated Use of Force Guideline, accompanied by a Use of Force Model, intended to guide police in assessing and responding to various situations. These documents provide a balance between two considerations: the judicious and proportionate use of force in a given situation; and officer safety as an important link to, or prerequisite for, public safety. In addition, while the Policing Standards Manual contains 58 guidelines in support of the Adequacy Standards Regulation, there are another 17 guidelines (four of which have been released in early 2004), which were promulgated to facilitate police compliance with other legislative initiatives.
128. With respect to correctional services, current policy and procedures are in place to ensure the rights of youth are not violated. The Office of Child and Family Service Advocacy of Ontario and the Provincial Office of the Ombudsman are permitted access to the facilities where youth are held, as well as to any record related to a young person in the course of conducting an investigation. Youth under community supervision, or in a custodial setting, or their family members, also have the right to initiate contact with these agencies. The Ministry of Children and Youth Services monitors compliance in provincial youth centres, and relevant directives, policies, procedures, training and standards prohibit and reinforce guidelines around the treatment of persons in custody in provincial youth centres.
129. With respect to adult offenders, current policies and procedures are in place to ensure that adults' rights are not violated. The Ministry of Community Safety and Correctional Services monitors compliance in adult institutions. Relevant directives, policies, procedures, training and standards prohibit abuse and reinforce guidelines around the treatment of persons in custody in adult institutions. There is an ongoing review of the offender misconduct process to ensure that penalties that remove the offenders' earned remission are fair and follow appropriate procedures.

130. In addition, the Independent Investigations Unit, which reports directly to the Deputy Minister, investigates allegations of sexual impropriety.

Article 10: Education and training

131. All those working with youth in open and secure youth custody facilities and in communities in Ontario receive training in a variety of areas including education and information related to the prohibition against mistreatment of youth. Areas of training are outlined in the Young Person Operational Policy and Procedures Manual and the Youth Justice Service Manual issued by the Ministry of Community Safety and Correctional Services. Training is provided to update correctional staff on new protocols, policies and procedures and the effective use of non-physical intervention.
132. During 2002 and 2003, the Ontario Provincial Police (OPP) promoted supervisory awareness of critically important policies throughout the organization. As part of this initiative, critical policy awareness presentations were made to law enforcement supervisory staff in respect to prisoner care and control, and prisoner transportation. This was undertaken to ensure fair and humane treatment of all prisoners in OPP care and custody.

Article 11: Treatment of persons arrested, detained or imprisoned

133. The Ministry of Community Safety and Correctional Services has policies and procedures in place for staff to follow for open and secure custody facilities where youth may be detained or imprisoned, as these specifically relate to the treatment of young persons in custody. Youth also have rights and responsibilities and protection under various statutes. In addition, a Rights and Responsibilities Booklet is available to young persons, whether they are on community supervision or in a custody setting, that helps them understand their rights and responsibilities under the *Youth Criminal Justice Act* as it pertains to the youth criminal justice system. Training for new correctional services staff includes an introduction and overview on the rights of the child as expressed in the *UN Convention on the Rights of the Child*.
134. Current policies and procedures are in place to ensure that adults' rights are not violated. The Ministry monitors compliance in adult institutions. Relevant directives, policies, procedures, training and standards prohibit and reinforce guidelines around the treatment of persons in custody in adult institutions.
135. Within Ontario's correctional system, the courts determine offenders to be placed under community supervision (i.e. probation or conditional sentence) and what conditions they must abide by. The Ontario Parole and Earned Release Board has the legislative authority to determine who is eligible for parole and temporary absences from a correctional facility for over 72 hours and what conditions the offenders must abide by. It is the mandate of Probation and Parole Services to ensure that the offenders placed under community supervision are assessed at intake for risk/needs and supervised in

accordance with their level of risk under the Ministry's Service Delivery Model. If offenders believe they cannot comply with their conditions or that they are not being treated fairly, they have recourse to the courts, the Board, or the area manager of the supervising probation office for variation of their order. They may also contact the Office of the Ombudsman of Ontario or the Ontario Human Rights Commission to investigate their concerns.

136. In addition, offenders who are charged with internal misconduct have the right to appeal any sentence that impacts on their legislated earned remission.
137. In November 2002 the Ministry of Community Safety and Correctional Services developed and implemented an Aboriginal Services Strategy and Implementation Plan for Adult Institutional Services and Community and Young Offenders streams. This strategy and implementation plan utilizes culturally appropriate approaches combined with effective programs for offenders. It outlines objectives to reduce the over-representation of Aboriginal people in the correctional system. Native Inmate Liaison Officer Services have been made available in two youth facilities to provide culturally appropriate programming. In addition, Aboriginal inmates have the right to practice their chosen spirituality. Staff in Adult Institutional Services as well as Community and Youth streams have been provided with cultural awareness training regarding Aboriginal offenders.

Article 13: Allegations of torture or abuse by authorities

138. The Fourth Report provides information on procedures for lodging complaints against authorities.
139. On November 12, 2003, the Ontario Attorney General announced the appointment of Justice Sidney Linden to lead an independent, public inquiry into the events surrounding the death of Dudley George, who was shot by a member of the Ontario Provincial Police during a protest at Ipperwash Provincial Park. In conducting the inquiry Justice Linden has a broad mandate to:
- inquire into and report on events surrounding the death of Dudley George; and
 - make recommendations directed to the avoidance of violence in similar circumstances.

Article 16: Prevention of other acts of cruel, inhuman or degrading treatment or punishment

Long-Term Care System

140. In 2004, the government embarked on a comprehensive plan to reform the province's long-term care system. In December 2003, the Minister of Health and Long-Term Care appointed his Parliamentary Assistant to undertake a top-to-bottom review of the long-

term care sector and to recommend practical actions to strengthen long-term care services.

141. The Ministry took immediate actions to raise care standards and protection for long-term care residents. As of January 1, 2004, all annual inspections of long-term care facilities are unannounced so that the Ministry can identify and act on incidents of substandard care, neglect or abuse more effectively. Complaint investigations are already unannounced.
142. The Ministry also created a toll-free number so that long-term care residents and their families have one easy access point to seek information or lodge complaints about a long-term care facility.
143. Ministry officials are taking a number of additional medium and long-term steps to continually improve the safety and quality of long-term care services. These efforts focus on four main areas:
 - better protection for residents, improved ministry inspection and enforcement,
 - improved accountability and performance management,
 - better public reporting and greater transparency, and
 - long-term strategies to improve the facility system's capacity to deliver high quality care.

Patient Restraints Minimization Act

144. On June 27, 2001 the government passed the *Patient Restraints Minimization Act*. The Act received Royal Assent on June 29, 2001.
145. The intent of the Act is to minimize the use of restraints and to encourage hospitals and other health care facilities to use alternative methods to prevent serious bodily harm by a patient to himself or others. Under the Act, a hospital or prescribed facility may not physically, mechanically or chemically restrain a patient, or confine a patient, or use a monitoring device on a patient unless it is necessary to prevent serious bodily harm to him or to another person. The use of restraints must meet other criteria prescribed by regulation, and be ordered by a physician or a person specified by regulation. The Act requires hospitals and other prescribed facilities to establish and follow policies, as prescribed in regulation, regarding restraints.

Regulations on the Use of Physical Restraints

146. In response to concerns raised over the use of physical restraints in residential settings in both the children's sector and the developmental services sector for adults, a Six-Point Action Plan was issued in September 2001. The Six-Point Action Plan is aimed at enhancing the safety and security of vulnerable children and adults who are in residential care and includes:

- a prohibition on the use of physical restraints, except in cases where the safety of individuals, staff or others is clearly at risk;
- clear and enforceable regulations on the use of physical restraints;
- revised licensing, compliance tools, service contracts and staff training requirements;
- an implementation guide;
- funding to train staff in residential programs; and
- stricter reporting requirements and sanctions for non-compliance.

147. The Six-Point Action Plan was fully implemented on April 1, 2003. On this date, provincial regulations on the use of physical restraints came into effect for residences licensed as children's residences under the *Child and Family Services Act (CFSA)* and residences funded under the *Developmental Services Act (DSA)* that provide group living supports to adults with developmental disabilities.
148. The amendments made to the *CFSA* in March 2000 have resulted in increased identification of children at risk of physical, emotional and sexual abuse and neglect. It has also led to more interventions to protect children.

Day Nurseries Act

149. Under Ontario's *Day Nurseries Act*, every licensed operator of a childcare centre or private-home day care agency must have written policies and procedures with respect to discipline, punishment and any isolation measures. No operator may permit corporal punishment of a child, deliberate harsh or degrading measures that would humiliate a child or undermine a child's self respect, or deprivation of a child of basic needs including food, shelter, clothing or bedding.

Revocation of Zero Tolerance Policy for Welfare Fraud

150. In December 2003, the Ontario government revoked the policy of permanent and temporary periods of ineligibility for social assistance for those convicted of welfare fraud. People who are convicted of welfare fraud may now receive social assistance to cover their basic needs and will no longer face life-threatening circumstances. Ontario has determined that the criminal justice system should deal with people who commit welfare fraud.

Manitoba

Article 2: Legislative, administrative, judicial and other measures

151. There are no new legislative measures to report.
152. The *Correctional Services Act* and its Regulations (1999) generated a re-draft of existing policies as well as development of new policies from 2000 to the present. While they are not explicit to torture, they support an environment that would deter such practices. In this manner the policies give life to the Convention. The “custodial” policies, with few exceptions, are applicable to both youth and adult offenders.
153. The Extending Delivery of Medications to Offenders policy, approved January 2001, is intended to ensure that when nurses are not available to the offender to receive prescribed medications, prescribed medication can be available on the continuing schedule by other trained staff delivering it in “blister packs”. This maintains the optimum dose schedule, relieves offender anxiety, and maximizes the beneficial treatment objectives.
154. Manitoba previously reported on the enactment of *The Protection for Persons in Care Act*, which imposes a duty on health facilities to protect patients from abuse and to maintain a reasonable level of safety for them. (Persons who have been found to be ‘not criminally responsible’ for the commission of an offence due to mental disorder, and who are subsequently detained in a hospital, are covered by this legislation). The Act imposes a duty to report, and to receive reports of, abuse. Abuse means “mistreatment, whether physical, sexual, mental, emotional, financial or a combination of any of them, that is reasonably likely to cause death or that causes or is reasonably likely to cause serious physical or psychological harm to a person, or significant loss to that person’s property”. The Act provides a mechanism for complaint, and the investigation of such complaints, mandates compliance with subsequent ministerial orders, etc.

Article 10: Education and training

155. The general approach within the staff-training unit (Corrections) is to maintain a respective workplace and adhere to the policy on Standards of Professional Conduct. The trainers are role models, and course content is prefaced by the purpose and principles of *The Correctional Services Act*, that is, “... policies programs and practices should take into account the age, cultural differences and abilities of offenders...”. Newly trained recruits for adult and young person facilities seeking to earn a full time position, as well as established staff members who want to advance, require the achievement of established competencies. In summary, all training activity reflects the concept of treating others with respect and to embrace diversity.
156. The Protection for Persons in Care Office (PPCO) provides ongoing education and training to help facilities and regional health authorities with respect to policies and

procedures required to comply with *The Protection for Persons in Care Act*. Since the PPCO commenced operations in May 2001, some 1,500 people have received relevant education and training.

Article 11: Treatment of persons arrested, detained, or imprisoned

157. While the objective is to prevent acts of torture and its other related elements within the process of detention and imprisonment, both the adult and youth correctional approach is to develop and enforce appropriate pro-active requirements backed by policy and procedures.
158. An extremely important opportunity for youth and adult offenders is to have visitors. While the legislation sets the parameters, safe and secure visits are in place at all facilities for both remand and sentenced offenders. Applications, screening, non-intrusive searches, regular visiting hours and non-contact alternatives combine to provide a safe, productive and valued experience. This is supported by the policy on Offender Visits, approved May 2002. In addition the policy on Visits by Spiritual Caregivers was approved February 2003 and further supports this activity.
159. All facilities have health care staff (including a community physician) on contract to provide care to the community standard to all offenders. More recently, facilities have retained mental health nurses and psychiatric referral to intervene with mental illness issues and suicidal behaviour.

Article 13: Allegations of torture or abuse by authorities

160. Inmate complaints are dealt with under *The Correctional Services Act*. An adult offender or youth resident may complain to the facility head, "about any condition or situation in the facility that affects the inmate" and be dealt with in accordance with the Regulations. In addition, an inmate may appeal from any prescribed decision affecting the inmate that was made by the facility head, divisional head or their delegate. Other elements regarding complaints include dealing with issues as soon as possible, taking all necessary steps and advising the inmate of the action taken on an appeal.
161. All complaints and major incidents are logged, investigated and rectified, whenever possible. The legislation and the policy on Correctional Investigations, approved March 2002, and Reporting Major Incidents, approved April 2003, require staff to cooperate in any investigation.
162. The Ombudsman's Office receives all policies of youth and adult correctional facilities at the same time as these are made available to staff. This ensures that the information is current and accessible when responding to a complaint. Cooperation with the Ombudsman's Office results in timely interventions.
163. The Ombudsman has a wide jurisdiction to investigate allegations of mistreatment by prisoners, and is active in that regard. For instance, the 2002 Annual Report of the

Ombudsman indicates 7 files opened during that reporting year involving Adult Corrections, and one file involving Youth Corrections. The Annual Report, at pp 32-37, illustrates the wide range of complaints investigated, as well as the positive changes which often occur as an outcome of an investigation (<http://www.ombudsman.mb.ca/pdf/Ombudsman%202002%20Annual%20Report.pdf>).

164. A wide range of allegations of mistreatment with respect to law enforcement authorities continue to be dealt with under the procedures set up pursuant to *The Law Enforcement Review Act*: see <http://www.gov.mb.ca/justice/lera>.

Article 16: Prevention of other acts of cruel, inhuman or degrading treatment or punishment

165. Significant safeguards have been adopted within Manitoba Corrections, involving established policy that act to mitigate the effects of “use of force” faced by offenders who are engaging in out of control disturbances, or are otherwise temporarily a danger to self or others.
166. The use of pepper spray, restraint chair, immobilizers and cuff and leg restraints are controlled by specific authorization. Incident response training, using the “continuum of force” is covered under corresponding policy. Decontamination is mandatory, medical care is available and documentation and reporting events are required.
167. The segregation of inmates gives rise to issues about the conditions of such confinement. In October 2002, a policy was approved to deal with the matter of “Preventive Segregation”. It provides for conditions of confinement and includes most of the privileges enjoyed by the overall population, as well as weekly scheduled nurse visits and a designated staff person visiting daily, and observation every 30 minutes.
168. An infrequent but critical situation is when an inmate goes on a hunger strike. Policy approved in February 2003 provides for tracking of fluids and food with health care staff and a physician managing the handling of ongoing care requirements up to admission to hospital.
169. Another of many health-related policies is the Methadone Maintenance Program policy (adult only) approved December 2002, when an addict is incarcerated, having been currently involved in a community methadone program.
170. The Communicable Disease Control policy was approved in July 2002. It has been recently amended in response to extending application. The health issue is managed by health professionals in the custodial facility in partnership with the community resources. Confidentiality under the *Personal Health Information Act* (PHIA) is pledged by all staff with the related policy on PHIA approved in May 2003. These policies combine to balance the related privacy rights of offenders against the “right to know” by applicable staff.

171. The emergence of gang members from the community has resulted in restricted custodial environments and other appropriate separation from non-gang offenders and from rival gang members. Gang culture includes initiation rituals that are often acts of torture from which other offenders are protected and insulated from recruitment, as much as possible. The facilities that hold significant numbers of gang members rely on "information" and have preventive security officers.

Saskatchewan

Article 11: Treatment of persons arrested, detained or imprisoned

172. Saskatchewan Justice established a committee of officials to implement the jury recommendations arising from the Coroner's Inquests into the deaths of the Aboriginal men, referred to in Canada's Fourth Report. The committee included representatives from the federal and provincial governments as well as representatives from the Aboriginal community. Most of the recommendations from the Inquests have been implemented, and others are underway. The committee is working on a final report that will outline its activities respecting implementation of the recommendations.
173. The Saskatchewan Police Commission, in its role of promoting adequate and effective policing, participated in a subcommittee of the Jury Recommendation Implementation Committee. The Committee undertook a full review of all aspects of police policy regarding the arrest, detention and holding of prisoners. The RCMP actively participated and, as a result, police policy was strengthened and aligned provincially.
174. The Department of Corrections and Public Safety (CPS) was formed April 1, 2002, bringing Adult Corrections, Young Offenders, Licensing and Inspections, and Protection and Emergency Services under one umbrella.
175. In Adult Corrections, CPS provided supervision on an average daily basis to 1,213 offenders in custody programs in 2002-03, and 1,205 in 2003-04, and to 5,617 in community correctional programs in 2002-03 and 6,095 in 2003-04.
176. With respect to Youth Corrections, CPS provided supervision to an average of 335 in youth custody programs in 2002-03, and 260 in 2003-04, and to an average of 2,438 young offenders in the community in 2002-03, and 1,964 in 2003-04.
177. The *Youth Justice Administration Act* was passed in 2003 to implement the federal *Youth Criminal Justice Act*, which introduced a new policy direction for youth justice, emphasizing risk management and integrated case management, including support for victims, families, communities and offenders, using multidisciplinary approaches.
178. One of the goals of the CPS Strategic Plan is to reduce reoffending behaviour through effective programming. Objectives under that goal are related to addressing cultural and spiritual needs of Aboriginal clients, and the effective use of diversion, alternatives to custody and offender reintegration into the community.
179. All eight youth custody facilities have staff assigned, either full time or part time, to work in partnership with local First Nations and Elders to develop, coordinate and deliver appropriate cultural programs for youth. The Department has established an ongoing forum with the Federation of Saskatchewan Indian Nations to address joint concerns and

partnerships have been developed with Aboriginal organizations to provide alternative measures and day program services and cultural camps for young offenders. In adult correctional centres, Elders provide cultural, spiritual and personal counselling services. Pipe ceremonies, smudging ceremonies, drum practice, sweat lodges, pow-wows, round dances, and feasts are regularly facilitated. Specific programs such as the Balanced Lifestyle program, the Prince Albert Grand Council Spiritual Healing Lodge and the Meyoyawin Circle Project allow Aboriginal offenders to address their needs in the context of their cultural and spiritual beliefs.

180. In addition to providing cultural and spiritual programming, and partnering with Aboriginal organizations in the delivery of programs, CPS emphasizes case management planning, building stronger links with community programs and services and working with other government departments and levels of government to better integrate services for Aboriginal people.
181. The Commission on First Nations and Métis Peoples and Justice Reform (referred to in Canada's Fourth Report) released its final report on June 21, 2004, after having released three interim reports. The final report emphasized the need for a community-based approach in which communities provide justice services as much as possible, and in which restorative approaches and alternatives to court and incarceration are used at every opportunity. Its recommendations fall under the following themes:
- *Improving the way the justice system operates for First Nations and Métis communities* – This involves improving the relationship between the justice system and Aboriginal peoples as well as improving the effectiveness of justice services.
 - *Closing major gaps in the operations of the justice system, as well as in the structure of many First Nations and Métis communities* – This involves specific justice reforms and initiatives to foster the development of Aboriginal leadership, promote integration, and address jurisdictional debates that affect the ability of communities to address offending and victimization.
 - *Looking beyond the justice system* – This involves reducing reliance on the justice system to solve social problems, and addressing the root causes of crime.
182. The Commission's recommendations cover a wide range of topics, from developing crime prevention initiatives to fostering youth leadership.
183. In terms of policing, the Commission recommended that the Saskatchewan Police Commission establish a broad strategy to address racism within police services. This strategy would include screening potential police officers to ensure that candidates with racist views are not hired, a remedial training program for officers who exhibit racist views, and a strategy to hire more Aboriginal police officers. The Commission also endorsed a community policing approach and recommended the development of a new process for handling complaints against the police. Moreover, to ensure that charges are used only when community-based options are not appropriate, the Commission

recommended that police services be required to prepare reports justifying decisions in which matters are not diverted, and that a provincial pre-charge screening program be developed in which Crown prosecutors would consider whether a matter could be referred to a community-based justice initiative as an alternative to court.

184. The Commission also made a number of recommendations regarding corrections. For example, the Commission recommended that there be greater availability of cultural and spiritual programming for incarcerated offenders, and that community-based programs be funded to aid offenders from the transition between prison and their release into the community. It also made recommendations regarding the provision of programming for female inmates and the establishment of a program to address the effect of parental incarceration on children. Additionally, the Commission called for the closure of two wings in the Regina Correctional Centre that are in need of repair, and recommended that all levels of government fully resource the implementation of the *Youth Criminal Justice Act*, particularly in terms of provisions that address community supervision for young offenders.
185. The Government of Saskatchewan has endorsed the themes in the Commission's reports. A number of the Human Services departments have new initiatives in 2004-05 that respond to the recommendations of the Commission. Further, in a process led by Saskatchewan Justice and Saskatchewan Corrections and Public Safety, thirteen provincial government departments will develop a detailed provincial response to the recommendations. This response, which will be completed by January 2005, will be implemented over the next few years in a coordinated way across government. For example, each of the thirteen departments will develop new actions that are consistent with the provincial government response in their fiscal and strategic plans for 2005/06. This process will ensure that government has time to fully assess the scope of the Commission's recommendations and proceed in an integrated manner.
186. As part of its terms of reference, the Commission was asked to make recommendations about an implementation structure to oversee the implementation of its recommendations once its term ends. Discussions are occurring among the Government of Canada, the Government of Saskatchewan, the Federation of Saskatchewan Indian Nations (FSIN) and the Métis Nation-Saskatchewan (MNS) about how to support an implementation structure, and the form that the implementation structure should take.

Article 12: Impartial and immediate investigation

187. The appeal of the conviction and sentence by the two police officers charged with the unlawful confinement of Darrel Night (referred to in Canada's Fourth Report) was dismissed March 13, 2003.
188. Canada's Fourth Report referred to an investigation into the death of Neil Stonechild. A public inquiry into the death of Neil Stonechild was established February 20, 2003. The Commission of Inquiry held approximately ten weeks of hearings, beginning September 2003 and concluding May 19, 2004. The Commissioner's final report is expected in the fall of 2004.

Article 13: Allegations of torture or abuse by authorities

189. Saskatchewan Justice is working with the police, the FSIN and MNS to revise the public complaints process so that it will enjoy the trust and respect of Aboriginal leaders and complainants. The process will involve an independent review of all public complaints against the police and will include participation from the Aboriginal community through a review panel. Saskatchewan Justice is also examining ways in which the federal RCMP complaints process can be aligned with the provincial process.

Number of complaints against municipal police officers processed by the office of the Saskatchewan Police Complaints Investigator:	
April 1, 2000 - March 31, 2001	154
April 1, 2001 - March 31, 2002	134
April 1, 2002 - March 31, 2003	130
April 1, 2003 - March 31, 2004	148

Findings:				
	2000-01	2001-02	2002-03	2003-04
Substantiated (supported by evidence)	18	9	12	16
Unsubstantiated (cannot be proved or disproved)	15	4	6	12
Unfounded (unsupported by evidence)	57	53	41	67
Withdrawn/Other	32	29	15	27
Not Yet Completed	46	40	63	53
Total*	168	135	137	175

*Some of the complaints filed included multiple complaints and findings.

Classification of Substantiated and Unsubstantiated Complaints*:		
2001-2002	Substantiated	Unsubstantiated
Discreditable Conduct	3	
Neglect of Duty	1	
Improper Disclosure of Information		1
Abuse of Authority	5	2
Other Offences		1
2002-2003		
Discreditable Conduct	1	
Insubordination	1	
Neglect of Duty	6	1
Abuse of Authority	4	4
Criminal Conduct		1
Other Offences		
2003-2004		
Discreditable Conduct	2	1
Neglect of Duty	6	1
Abuse of Authority	6	10
Criminal Conduct	2	

*The 2000-2001 Annual Report of the Saskatchewan Police Complaints Investigator does not classify the substantiated and unsubstantiated complaints; it classifies only total complaints, including unfounded and withdrawn complaints.

Article 14: Redress, compensation and rehabilitation

190. Saskatchewan has a Victims Compensation Program, the purpose of which is to provide compensation to a person who has suffered physical, mental, emotional or economic harm by reason of an act that is in violation of one of the criminal offences described in the Regulations. These are personal violent crimes, including assaults.
191. While compensation may not help with all of the concerns of victims of crime, it is one way to acknowledge the effect of the crime and help pay for some of the associated costs. Types of expenses covered by the program are loss of earnings, most medical expenses authorized by a physician, dental expenses, counselling, funeral expenses and travel costs. If the costs are covered by other sources, then compensation would not be payable. Saskatchewan does not provide payments of compensation for pain and suffering.

Alberta

192. The Government of Alberta continues to be in compliance with the provisions of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. The legislative and administrative measures outlined in previous reports under this treaty remain in effect. No significant developments have occurred during the period of this report that would add to the information already provided to the committee. However, it can be noted, further to paragraph 366 of the Fourth Report that the Correctional Services Division, formerly part of Alberta Justice, became part of the new Ministry of Solicitor General that was created in 2001.

British Columbia

Article 11: Treatment of persons arrested, detained or imprisoned

193. With regard to patients in psychiatric facilities, the following reflects changes to the *Mental Health Act* made in 1999. Patients involuntarily placed in psychiatric facilities must be notified of their patient rights both orally and in writing. If the patient is incapable of understanding their notice of rights upon admission, the rights must be repeated when the patient is able to understand the information. Patients can nominate a relative or friend to whom notices regarding admissions, renewals, review panel hearings and discharges are sent. Patients, or persons on their behalf, may request a physician of their choice to provide a second medical opinion on the appropriateness of treatment.

Article 13: Allegation of torture or abuse by authorities

Office of the Police Complaint Commissioner

194. On March 11th, 2004, an Order in Council was passed, amending s.50(3)(f) of Part 9 of the Police Act. As of March 11th, 2004, the Police Complaint Commissioner may make a recommendation to the Solicitor General (rather than the Attorney General) that a matter proceed to public inquiry.
195. On December 3rd, 2002, a Memorandum of Understanding was agreed upon, whereby complaints regarding sworn municipal officers seconded to the Organized Crime Agency of British Columbia fall within the mandate of the Office of the Police Complaint Commissioner.
196. As of December 1st, 1999, the Stl'atl'imx Tribal Police became a self-administered police service in British Columbia. As a result, their officers are municipal constables subject to the provisions of Part 9 (Complaint procedure) of the *Police Act* and fall under the mandate of the Office of the Police Complaint Commissioner.
197. As a result of a recent British Columbia Court of Appeal decision, the protocol for selecting an adjudicator for public hearings has been modified. Adjudicators, who are retired judges or justices, are now selected by the Associate Chief Justice of the Supreme Court and then appointed by the Police Complaint Commissioner, thereby eliminating any possibility of bias.
198. Between January 2000 and December of 2003, the Police Complaint Commissioner ordered eight public hearings. Six have been completed and two are scheduled for hearing later in 2004.
199. The Office of the Police Complaint Commissioner has opened an office in Victoria, in addition to the Vancouver office, thereby increasing public awareness and accessibility.

200. The Police Complaint Commissioner ordered an investigation into complaints of abuse by the police received from residents of the Vancouver Downtown Eastside. The results of this investigation are expected later in 2004.
201. The Police Complaint Commissioner concluded a lengthy review of the internal investigation into the police conduct at a December 1998 public demonstration at the Hyatt Hotel in Vancouver, British Columbia. The findings released at the conclusion of the review in May 2004, indicated the Commissioner was completely satisfied with the quality and extent of the internal investigation and that a public hearing into this matter is not necessary. Further, the Commissioner found that the investigation report established to his satisfaction that the force used in this particular situation was neither unnecessary nor excessive.
202. Complaints monitored by the Office of the Police Complaint Commissioner since 1998:

COMPLAINTS RECEIVED					
<i>Year</i>	<i>Total</i>	<i>Public Trust</i>	<i>Internal Discipline</i>	<i>Service or Policy</i>	<i>Other</i>
2000	398	299	12	19	68
2001	356	306	8	15	27
2002	407	329	16	6	56
2003	456	393	11	9	43

"Public Trust" complaints affect the relationship between a police officer and the community and allege specific misconduct on the part of the police officer.

"Service or Policy" complaints are complaints regarding the policies, procedures and services provided by a municipal police department and affect the relationship between the police department and the community.

"Internal Discipline" complaints concern police misconduct that is of concern to the officer as employee, but does not affect the officer's relationship with the public.

"Other" refers to complaints that may be a combination of Public Trust, Service or Policy and Internal Discipline, or are complaints that have yet to be characterized.

CONCLUDED COMPLAINTS									
Year	Total	A/W	R&C	IR	SD	NS	Substantiated		Other
							Corr/Disc	No Corr/Disc	
2000	439	26	42	64	145	77	46	8	31
2001	355	18	22	51	132	75	42	6	9
2002	378	33	22	25	139	111	21	16	11
2003	366	32	6	27	129	126	38	1	7

AW	Abandoned/Withdrawn	Sub Corr/Disc	Substantiated, corrective or disciplinary measures imposed
R&C	Reviewed & Closed (Service & Policy complaints)	Sub No Corr/Disc	Substantiated, no corrective or disciplinary measures warranted
IR	Informal Resolution		No jurisdiction; or officers resigned/retired
SD	Summarily Dismissed	Other	
NS	Not Substantiated		

Office of the Ombudsman

203. Further to the report in paragraph 401 of Canada's Fourth Report, which provided the complaint procedure available to inmates held in provincial correctional centres, the following should be added:

- Where an inmate provides reasons suggesting this procedure cannot provide an appropriate and timely review, the Office of the Ombudsman will investigate a complaint without requiring prior use of this procedure.

204. While information on the role of the provincial Ombudsman is included in the Fourth Report, the following provides a current description of the scope that this office has for reviewing complaints from inmates:

- The Ombudsman, an Officer of the Provincial Legislature established by enactment, will investigate complaints for which no appropriate avenue of review exists or remains, including complaints by inmates and by young offenders. The complaints may relate to actions, decisions, omissions and procedures within the custodial setting, or in other government authorities with which the complaint deals. The Ombudsman has established protocol for confidential written communication between his office and inmates, exempt from usual procedures to censor mail. The Ombudsman provides a free telephone line and number, for the use only of persons held in custody.

Part III

Measures Adopted by the Governments of the Territories

Nunavut

205. The Government of Nunavut continues to be in compliance with the provisions of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. The legislative and administrative measures outlined in previous report under this treaty remain in effect. No significant developments have occurred during the period of this report that would add to the information already provided to the committee.

Northwest Territories

206. The Government of Northwest Territories continues to be in compliance with the provisions of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. The legislative and administrative measures outlined in previous report under this treaty remain in effect. No significant developments have occurred during the period of this report that would add to the information already provided to the committee.

Yukon

Article 13: Allegation of torture or abuse by authorities

207. The Government of Yukon continues to be in compliance with the provisions of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. The legislative and administrative measures outlined in previous reports under this treaty remain in effect. No significant developments have occurred during the period of this report that would add to the information already provided to the committee.



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